1862

(Nelson)

SUPREME COURT OF THE UNITED STATES.

No. ~~241~~. 120.

THE BARK WEATHER GAGE, HER TACKLE, &c., AND CARGO, JOHN MORRIS, CLAIMANT AND APP'T,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

argd Feby 1/65

affirmed

1857

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1853

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this ninth day [SEAL.] of January, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the said United States the eighty-seventh.

KENNETH G. WHITE, *Clerk.*

2 *To the honorable Samuel R. Betts, judge of the district court of the United States of America for the southern district of New York:*

The libel of information of James J. Roosevelt, attorney of the United States for the said southern district of New York, who prosecutes for the said United States, in this behalf, and being present here in court, in his own proper person, in the name and on behalf of the said United States, against the bark Weather Gage, her tackle, apparel, and furniture, and lading, in a case of seizure and forfeiture, alleges as follows:

First. That a certain citizen or certain citizens of the United States, or a certain foreigner or some other person, coming into or residing within the same, whose name or names are as yet to the said attorney unknown, did, for himself or for themselves, or for some other person or persons, whose name or names are as yet to the said attorney also unknown, either as master, factor, or owner, heretofore, to wit, on the day of , in the year eighteen hundred and sixty, fit, equip, load, and otherwise prepare the aforesaid vessel, being a bark called Weather Guage, within a port or place of the said United States, to wit, the port of New York, for the purpose of carrying on a trade in slaves to some foreign country, to the said attorney as yet also unknown, or for the purpose of procuring from some foreign kingdom, place, or country, to the said attorney as yet also unknown, the inhabitants of such kingdom, place, or country, to be transported to some foreign country, post, or place, to the said attorney as yet also unknown, to be sold and disposed of as
3 slaves, contrary to the first section of the act of Congress, approved March the 22d, in the year seventeen hundred and ninety-four, entitled "An act to prohibit the carrying on the slave trade from the United States to any foreign place or country."

Second. That after the passing the act of Congress, approved April 2, 1858, entitled "An act in addition to the act to prohibit the introduction (importation) of slaves into any port or place within the

jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same, to wit, on the day of , in the year eighteen hundred and sixty, some citizen or citizens of the United States, or some other person or persons, whose name or names are as yet to the said attorney also unknown, either as master, factor, or owner, fit, equip, load, and otherwise prepare the said vessel, being the bark called Weather Gage, in a port or place within the jurisdiction of the United States, to wit, the port of New York, in the southern district of New York, and within the jurisdiction of this court, for the purpose of procuring certain
4 negroes, mullattoes, and persons of color from some foreign kingdom, place, or country, to the attorney aforesaid unknown, to be transported to some port or place, to the said attorney also unknown, to be held, sold, and otherwise disposed of as slaves, and to be held to service and labor contrary to the seconed section of the last-mentioned act of Congress.

Third. That the said vessel, being the bark called Weather Guage, is now lying in the port of New York, in the district aforesaid, having on board of her her aforesaid lading, consisting of certain merchandise, provisions, and other articles, and of which a schedule marked A is hereto annexed, and to which schedule reference is hereby made as part of this libel. (Schedule A.)

5 That by reason of the premises, and by virtue of the said act, the said bark Weather Guage, her tackle, apparel, and furniture, and lading, became forfeited.

That all and singular the premises aforesaid are and were true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said bark Weather Gage and her tackle, apparel, and furniture and lading, in this behalf to be made, and that all persons interested in the said bark Weather Gage, and her tackle, apparel, and furniture and lading, may be cited to answer the premises; and that all due proceedings being had thereon, this honorable court may be pleased to decree for the forfeiture aforesaid, and that the said bark Weather Gage, her tackle, apparel, and furniture and lading, may be condemned for the use of the United States according to the said acts of Congress, &c.

JAMES J. ROOSEVELT,
U. S. Attorney.

Endorsed: 16, 162. U. S. district court. The United States *vs.* the bark Weather Gage, her tackle, &c., and lading. Libel. James J. Roosevelt, U. S. dist. att'y. Filed Oct. 1, 1862.

1857

6 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the first day of October, in the year of our Lord one thousand eight hundred and sixty, by James J. Roosevelt, esq., U. S. district attorney, on behalf of the United States of America, against the bark Weather Gage, her tackle, &c., and lading, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said barque or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said barque or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said barque or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 23d day of October next, at 11 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this first day of October, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fifth.

GEO. F. BETTS, *Clerk.*

JAS. J. ROOSEVELT,
Proctor for Libellant.

7 In obedience to the within monition, I attached the bark Weather Gage, her tackle and lading therein described, on the 1st day of October, and have given due notice to all persons claiming the same, that this court will, on the 3d day of Oct., inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ISAIAH RYNDERS,
U. S. Marshal.

Dated Oct. 23d, 1860.

Endorsed: Vol. 16, page 162. Southern district of New York, United States district court. The United States *vs.* The bark Weather Gage, her tackle, &c., and lading. Monition ret'ble 23 Oct., 1860. Jas. J. Roosevelt, proctor for libellant. Filed Oct. 23, 1860.

8 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 23d day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES *vs.* THE BARK WEATHER GAGE, HER TACKLE, &C., and LADING. } Vol. 16, page 162.

The marshal having returned on the monition "bark Weather Gage, her tackle and lading attached, notice given, and proclamation made," whereupon Messrs. Beebe, Dean & Donohue appear for the claimant, and have one week to file and perfect answer of claimant.

9 Endorsed: Vol. 16, No. 162. United States district court for the southern district of New York. The United States *vs.* The bark Weather Gage, her tackle, &c., and lading. J. J. Roosevelt, U. S. att'y. Beebe, Dean & Donohue, proctor for cl'm't. Order for time. Filed the 23d day of Oct., 1860.

10 At a stated term of the district court of the United States of America for the southern district of New York held at the United States court-rooms, in the city of New York, on Wednesday, the 31 day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARK WEATHER GAGE, HER TACKLE, &C., and LADING, *ads.* THE UNITED STATES. } Vol. 16, page 162.

On filing a consent, signed by the U. S. district attorney, and on motion of Mr. Donohue, for the respondent in the above-entitled cause, it is ordered that the respondent in said cause have one week further time to answer.

11 Endorsed: Vol. 16, No. 162. United States district court for the southern district of New York. The bark Weather Gage, her tackle, &c., and lading, *ads.* The United States. Beebe, Dean & Donohue, proctor for cl'm't. Order one week further time to answer. Filed the 31st day of October, 1860.

12 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the thirtieth day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARK WEATHER GAGE, &c., and cargo, *asm.* THE UNITED STATES.

And now, John Morris intervening for the interest of himself, as owner of the vessel and carrier of the cargo, appears before the honorable court and makes claim to the said vessel, her tackle, &c., as the same are attached by the marshal, under process of this court, at the instance of The United States; and the said John Morris aver that he was in possession of the said vessel, her tackle, &c., at the time of the attachment thereof, and that the person above named is the true and *bona fide* owner of the said vessel, her tackle, &c., and that no other person is the owner thereof; and the said John Morris, the true and lawful bailee thereof, as owner and claimant; wherefore he prays to defend accordingly.

JOHN MORRIS.

Sworn to and subscribed this 13th day of October, A. D. 1860, before me.

CHAS. W. NEWTON,
U. S. Commissioner.

13 Endorsed: Vol. 16, No. 162. United States district court for the southern district of New York. Bark Weather Gage, &c., *asm.* The United States. Beebe, Dean & Donohue, proctors for claimant. Claim of John Morris. Filed the 17th day of October, 1860.

14 U. S. district court.

THE BARK WEATHER GAGE, HER TACKLE, &C., and LADING, *ads.* THE UNITED STATES.

SIR: Please to take notice that an application will be made to this honorable court, on the 3d instant, at the opening of the court on that day, or as soon thereafter as counsel can be heard, that appraisers be appointed to appraise the value of the above-named vessel and lading, and that upon giving stipulations for value and costs that they be delivered to the claimants.

Dated October 2, 1860.

Yours, &c.,

BEEBE, DEAN & DONOHUE,
Pro. for Cl'm't.

To Hon. JAS. J. ROOSEVELT,
U. S. Att'y.

15 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Wednesday, the 3d day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

THE BARK WEATHER GAGE, HER TACKLE, &c., and LADING, *ads.* THE UNITED STATES.

On reading and filing notice of motion for appointment of appraisers, ordered that the said vessel and her cargo be appraised; and the U. S. dist. att'y consenting,

It is ordered that D. Colden Murray and Frederick J. W. Barkman be, and they are hereby, appointed appraiser to appraise the value of the said bark Weather Gage, her tackle, &c., and cargo.

And it is further ordered that the clerk of this court give notice of the appointment of said D. Colden Murray and Fred'k J. W. Barkman as such appraiser.

J. J. R.

Approved: SAM'L R. BETTS.

16 Endorsed: Vol. 16, No. 162. United States district court for the southern district of New York. The bark Weather Gage, her tackle, &c., and lading, *ads.* The United States. Order of appointment of appraiser. Filed the third day of Oct., 1860.

17 United States district court, southern district of New York, in admiralty.

THE UNITED STATES *vs.* THE BARK WEATHER GAGE AND OTHERS.

The undersigned having been appointed appraisers to appraise the value of the bark Weather Gage and cargo, do solemnly swear that they will faithfully appraise the same to the best of their skill and ability.

F. J. W. BARKMAN.
D. COLDEN MURRAY.

Subscribed and affirmed to this 4th day of October, 1860, before me, as to F. J. W. Barkman.

[L. S.] O. R. STEELE, *Notary Public.*

Subscribed and affirmed to this 9th day of Oct., 1860, before me, as to D. Colden Murray.

O. R. STEELE, *Notary Public.*

18 Endorsed: Vol. 16, page 162. United States district court, southern district of New York, in admiralty. The United States *vs.* The bark Weather Gage and cargo. Appraisers' oath. Filed Oct. 17, 1860.

19 United States district court, southern district of New York, in admiralty.

THE UNITED STATES
vs.
THE BARK WEATHER GAGE, &c., AND CARGO.

The undersigned having been duly appointed and sworn as appraisers to appraise the value of the bark Weather Gage and cargo, do report, that they have examined the same, and do find that the vessel is worth nine thousand doll's, and the cargo is worth the sum of eleven thousand six hundred and eighty-one $\frac{42}{100}$ dollars.

Dated New York, Oct. 16, 1860.

All which is respectfully submitted.

D. COLDEN MURRAY.
F. J. W. BEEKMAN.

20 Endorsed: Vol. 16, page 162. United States district court, southern district of New York, in admiralty. The United States *vs.* The bark Weather Gage and cargo. Appraisers' report. Filed Oct. 17, 1860.

21 *To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:*

The answer of John Morris, owner of the bark "Weather Gage" and carrier of the cargo, respectfully shows:

First. That the claimant has duly claimed said vessel and cargo.

Second. That the claimant denies each and every allegation of the complaint herein.

Third. That all and singular the premises are true. Wherefore, the claimant prays that the libel herein be dismissed with costs.

JOHN MORRIS.

Sworn to before me, 8th day of Nov'r, 1860.

WM. L. TAYLOR,
Notary Public.

BEEBE, DEAN & DONOHUE,
For Claimant.

C. DONOHUE, *Adv.*

22 U. S. district court.

THE UNITED STATES
vs.
THE BARK WEATHER GAGE, HER TACKLE, &C., and CARGO.

Dec. 6, 1860.—*Pleadings read.*

Dec. 7, 1860.—*Evidence for libellant.*

John M. Simpson sworn: I am inspector of custom-house. I was instructed, by the surveyor from the collector, to unlade the bark "W." Order was given about the 12th Sept. Mr. McGrath was instructed to unlade her with me. This is report signed by McGrath and myself. Is true statement of what I found on board of her, marked Ex. No. 1. Have not seen manifest. There was a temporary between-deck on "W." 'Twas made of rough boards, not such as generally put in ships when built; ship was regularly beamed and they were permanent. I should think this deck was not necessary to carry cargo on board of her. Lead pencil marks on
23 Ex. No. 1 are not mine. I should judge that the temporary deck was about 5½ feet below the main deck; am not positive. Don't remember whether the 4 shovels were new or old. Think most of articles were new.

(Following question obj. to.)

The ten furnaces and boilers found on board were suitable for cooking and boiling anything; anything could be used for cooking food; suppose they would cook a peck of rice—about 20 pounds. The furnaces and boilers could have been put up on the deck of a ship to cook with. I think I looked into galley of this bark. There was room for two or three of these boilers in galley, stowed pretty close; saw no provisions made for protecting deck. The draft was some five inches from bottom; the whole was about 4 feet high. It would be necessary to have something under the boilers to protect vessel from heat. I saw a long piece of chain on board vessel—some 60 fathoms—I think. The links were ⅜-inch iron, not having enough for cable. These boilers were not boxed up. We didn't
24 open any boxes. Didn't see any pipes, I think. Don't know where 3 barrels of vinegar were placed. There were 114 water casks, I think. They were as large as sugar hogsheads, some of them; some were oil and liquor casks. Don't know what was largest and what was smallest. Largest was a third larger than smallest. I judge these were stowed in lower hold, and filled with water. Don't know whether it was salt or fresh. Didn't taste it.. 'Twas emptied on deck. Muskets and powder were between decks Powder was taken on board after I had charge of her. Think there were 15 casks of powder; 123 bales of cotton goods were stowed between decks. Didn't see any extra sails; there were some extra spars. Her usual water casks were on deck—those that were lashed and painted; think there were six or eight; don't know whether they

were filled with water. The quantity and kind of stuff on board attracted my attention, (objected to,) and the deck. Two boats stowed on deck—covered boats, what they call "surf boats"—attracted
25 my attention. These being covered, and having hatches, attracted me; one was on each side of the vessel. Both boats occupied ½ width of ship. I don't know whether they laid on deck or whether something was under him. The fact of their being on deck didn't attract my attention. There were 11 water casks on deck; those in hold were considered as cargo; the four small boats, in memoranda, were separate from the other two large boats. You would have to put people in horizontally in order to get them under *canvass* of surf boats—they couldn't sit up. The hold of surf boats were about 3 feet high. I thought the covered boats were suspicious; in case of going ashore, these decks would prevent there being swamped. I guess you could stow a dozen persons in hold of these surf boats—perhaps 20. Suppose you could put as many more on deck; each boat would carry from 24 to 40 persons; other boats were open ship boats. Don't remember any zinc on board; don't
26 think there was any sheet iron; the 32 oars were in between decks; the rudder and tiller of surf boats were, I think, in the surf boats; didn't see any swivels. Lumber was stowed between decks—large lot of it; think the "between deck" was nailed down; wasn't corked; think vessel had 3 hatches; not positive, may be 2. Between decks was clear fore and aft; there was a ventilator in the after hatch; the hole in the hatch was 1 foot in diameter; a pipe rose from that some 8 inches, and was covered with canvass; think canvass was nailed down. No other means of ventilating between decks, unless hatches were removed. The hatch extends thro' the temporary deck; there were 2 or 3. Don't remember of seeing hatches in hatchway in temporary deck. You could reach the water casks thro' the temporary deck; the water casks filled up the lower hold.

Ques. You said that the water casks filled up the lower hold under the temporary decks. Were the water casks so arranged that
27 holes could have been made thro' the temp'y deck and the pipes of pumps passed thro' into the bung-holes of water casks, so as to pump up water, as it might be required for use?

(Obj. to.)

Ans. You could reach the upper tier with an ordinary cask-pump. The bungs were found in the bung-holes—most of them; some of them, in lifting up, the water would run out; majority had bungs in. Think vessel had no means of ventilation at side. I saw nothing in way of ripping up deck forward, and so ventilate between deck, if there was nothing there; there was a poop-deck astern. The cabin did not take up all the space under the poop-deck, but that and state-room did; there were 2 state-rooms on each side of cabin; one had 2 bunks and was filled with stores; dont remember whether there were 2; stores were also on floor; temporary deck went clear astern; don't know of any means of ventilation in stern; saw no holes.
28 Think there were 2 end windows in cabin looking out on deck; dont remember anything else suspicious.

Cross.

I've been inspector of customs since July a year; never followed the sea; never been a stevedore; never built a ship; never worked as ship-carpenter or shipwright; while cargo was coming out I stood most of the time by the hatchway; 'twas broke out by a stevedore; was down between decks 3 or 4 times before cargo was out. Don't know where flour was stowed, nor rice either. Never was on coast of Africa; never been connected with African trade.

Enoch Ware sworn. (Ex. taken subj. to ob. concerning man:)

I am a shipping merchant; have been established about ten years; trading to Africa, exclusively to the western coast and Gulf of Guina. Have sent from 78 to 100 vessels there. (Object to question whether government has ever stopped his vessels.) Have looked over
29 items in Ex. No. 2. About the same articles as merchants would send to Africa; every part has its different trade. Ambiz is on south coast; think it has same trade as Congo river; they ship palm-oil, ivory, and gum from this district. Don't think I've sent a cargo out like this; my trade is different. There is regular trade from Salem to this district; 30 or 40 ships; one house in Salem; used to be one in N. Y. In Salem the firm is Robert Brookhouse; has traded some 40 years. I have traded with Gambia, Sierra Leone. All, I think, north of equator. I get hides, palm-oil, ivory, gum, pepper, ginger, peanuts, coffee; $20,000 would not be a large cargo for such a place. I employ vessels of 150 to 300 tons; larger for the southern bounds of my trade; schooners, brigs, barks. I've sent most of the articles. I never sent just such a cargo. I send water in that way; we send a lot of casks and the water is pumped out and the oil poured in without moving them. South coast is mostly
30 gum, ivory. Oil trade is principally in Bight of Benin. It is usual that the balance of vessel is required for the cargo, besides the hold. Have done so partially. The trade is to let our goods go, waiting for payment in oil trade; trust is nominally 2 mos. in south coast trade. Mr. Brookhouse brings back, more or less, palm-oil. (Objected to.) Persons have sent out a cargo from here without connections on the other side—sometimes successfully. I've been on coast. I know nothing of slave trade. (Objected to.) They take rum, tobacco, &c., just same as legal trader; sometimes money. They generally send a vessel out before with cargo; then send a vessel for slaves without anything except food for slaves; then they immediately ship slaves and return. I never knew a vessel transferred on coast. I don't know how they sail from this port. I know how they did it some fifteen years ago. I put up something similar (to the tempor'y deck on W.) for convenience, just the other day.
31 Never sent a vessel to Hong Kong *via* Ambriz. Don't know whether they do; they might. I've called at different ports to leave part of freight. Know of no negro trade *via* China. I have a surf boat just built. They are very useful in unloading and loading. I traded personally on coast 9 years. Trade between Goree and Sierra Leone. I think the Portuguese carry on the trade the most. Mr.

Brookhouse sends 9 or 11 vessels on this African trade. House in Boston, also in England. I don't know whether send vinegar to wash niggers' mouths with. A house in New London sends ships there—Johnston. I shipped rice for food, for crews, and to sell. Mr. Porterfield sends vessels to Bight of Benin.

I sent out a cargo of cotton goods; part were sold and part sent back. Don't know about disinfecting fluid. Medicines sell out there. I've sent lime for cleansing purpose. Some have bulkheads
32 and some have not. We have these boilers for starting palm-oil, as even there it is stiff sometimes. Didn't notice as there was more ale and wine than might be shipped for stores. Merchants there live the same as here. 8 anchors would sell there. Copper has been ordered from there to sheath vessels. I generally send from 2 to 4 swivels for protection and to sell. I think *this cargo* would be as likely to go *for legal* as *illegal* purposes.

Cross.

A person before he sends out, judges what would be most wanted, besides orders.

Evidence for claimants.

Frederick C. Schmidt sworn:

Am ship broker. Know J. T. Woodbury; he is my partner; he once owned Weather Gage. Have seen W.; she had when returning from Rio, a part of her between decks in beams, built in vessel. I ordered a deck to be laid; the balance between deck; 'twas done before she was sold. (Ex. No. 3.) This is my partner's
33 handwriting; this is bill of sale. I know of the payment of purchase-money by Mr. Morris to Mr. Woodbury. I've been some 8 or 9 years on my own acc', and before, 7 or 8 y'rs as cl'k. I had considerable experience in vessels. My brother was agent for a large number. I have known 60 odd vessels in port at one time. It is usual to have such a deck in a vessel: a matter of taste, and it depends whether the forecastle is on deck, as to whether there are bulkheads below.

Cross.

Mr. Woodbury is in town. Know Morris: don't know his business; knew him 2 mo's. Morris gave $12,000 for "W." Seen him in street. Don't know whether he lives in N. Y. Don't know his means. Don't know whether Morris is a go-between or owner. Don't know of any title being held by American to give ship a character, when it belonged to another. I made a charter from here to Ambriz—ship 300 tons—the Magdalena—$550 a month, the charterers paying all expenses and putting their own master on board.
34 The vessel was chartered for 8 or 12 months; she was gone for 18 mo's. About 5,000 for use of ship. Don't think $4,000 a large charter for ship to coast of A.

The ship-master, on one side, and merchant, on the other, sign papers. Don't remember hearing of a voyage for Hong Kong *via* Africa. I knew many persons who deal in ships here. Don't know Morris.

Principally European trade.

Redirect.

John M. Machado affirmed:

I've been in African trade since '36; have been merchant in this city in the trade '47 to '57. I was in business on coast on my own acc't, and on commission, and a supercargo for myself. All vessels have supercargo that I send from here. Sometimes I've had 18 vessels on coast at time; have owned 8 or 10; my trade has been from Barbary down to Benguela. Have been at Ambriz; belongs to Portugal; has custom-house and duties. Factories are where you
35 buy oil, &c., and trade. I've sent vessels with two decks. Have sent vessels of 600 tons. Vessels used in coast from Cape Palmas to ———; we generally have 3 ———. At Ambriz we get peanuts, palm-oil, gum, copper ore, and moss. There is a large trade on south coast; most of trade from American ports owned by Portugal; considerable for Boston and Salem. I generally send such articles as are on manifest to south coast.

Cross.

Don't remember of being witness for Donohue or Beebe before.

I've sent all articles on that manifest to Africa. No slave trade in Ambriz. I know of no illegal trade to coast of Africa from here. I've sent muskets, cotton goods, rum, &c., to Africa. I once did as much business as any one else. I never lost a hundred dollars by the detention of U. S. You can send anything you please to Africa. I know Ambriz. In the Congo river the slaves are bought, and sometimes to the north; the south I don't know about. Cotton goods are used to buy niggers, but also in lawful trade. I
36 owe $15,000 to a house here for powder sent to Africa. I know no one who sends for slaves from here. Spaniards, some of them, make a business of slaves. All nations. I am not in any business now. I know Mr. Tuero. I don't know Morris. I've only known Tuero this summer; I became accidently acquainted with him; I once served him as an intepreter in business; not about "W;" I've been on board "W," 4 or 5 years ago, to buy or charter her. Never had any intercourse with Tuero about "W." Don't know

———.

I've known people in Ambriz; perhaps it has 3,000 inhab's; never heard of Lyvers at Ambriz. Never sent vessels to China *via* Africa; but have known vessels to go to Brazil, then to Africa, and then to China. Formerly, the slave trade was carried on in Brazil, before I was there. I have known vessels to go from Salem to India with casks full of water for Anaik.

Farnum Z. Tucker sworn:

37 Am ship repairer in Brooklyn; have seen "W;" have seen this 'tween decks when it was laying; I've been ship-master for 16 years; I have laid decks like it; but it aint usual; I had them put in myself.

Cross.

This vessel is about 5 y'rs old.

Edward Smalley sworn:

I am a rigger and stevedore. I was to work on cargo of "W" part of time. There was a between deck and lower hold. In the lower hold there was water, rice, flour, and wood, for dunnage; firewood, proper dunnage.

The cargo was between decks. The cargo was properly stowed, and in the way I generally do. Been stevedore and rigger 10 years; been to sea since I was 14; saw her spars; no unusual number. I was aboard of her while in charge of custom-house officer; in stream; taking powder; we can't take powder in alongside dock.

Cross.

I've stowed one or two vessels that have been libelled.
38 Never saw Cora stowed. Josephine, Kate; and bent Charlotte E. Fay's sails. Don't know Mr. Eastman. Mr. Sands employed me to stow the Kate; he did not employ me to bend Charlotte E. Fay's sails. Have been to sea 10 years. I didn't fill casks of "W;" she was laying in North river, pier 46, foot of Spring st. Think she had fore-hatch; she had an after; no more roomy than other vessels I've seen.

Redirect.

Sands is the boss stevedore; he hires me to stow vessels.

Dec. 11, 1860.—Cause continued.

Antonio Tuero, claimant, sworn thro' interpreter.

Sidney S. Norton sworn:

Lib'l'nts' occupation, clearance clerk; paper is shown, and says it is manifest of bark Weather Gage; don't want to swear to that paper; takes one from pocket, marked No. 3, and paper No. 2 is captain's manifest; No. 3 is shipper's manifest of bark Weather Gage;
39 was presented by Henry C. Smith and Capt. Mitchell; clearance was refused by collector's instructions. Another paper was presented; would not swear it was one dated 12th Sept. Don't know John Morris.

Cross.

No one was present except capt. and broker; don't know it was capt.; never saw him to my knowledge.

Mr. Wilcoxson argues for the U. S.
Mr. Donohue argues for the claimant.
Mr. Beebe argues for the claimant.
Mr. Wilcoxson argues for the U. S.

C. O. V.

EXHIBIT No. 1.

40 *Return of merchandise, unladen under our inspection pursuant to orders for that purpose, goods transferred from bark Weather Gage to No. 56 Atlantic dock, September* 15, 1860:

Fifty-seven bbls. of beef and pork.
Ten do. flour, beans, meal, &c.
Ten empty hogsheads.
Eight anchors.
LL Ninety-four bdl's shooks.
Eight bdl's brooms and brushes.
One hundred and six pieces lumber.
One lot of brands.
LL Three cases yellow metal.
Sixty fathoms chain.
One cask do.
Three empty kegs.
Two bags cork.
Four shovels.
One box nails.
One lot sails.
One case sardines.
Two bales oakum.
One string blocks.
One bbl. crushed corn.
Two do. sugar.
Two do. corn meal.
41 LL Eighty do. bread.
Seventeen tierces powder.
Three rolls leather.
Forty bdl's hoop iron.
Three handspikes.
One b'dl. belaying pins.
Four cans oil and
Four name boards.
Two cask-pumps.
Two axehelves.
LL Eighty-three bbls. rice.
One hundred half-bbls.
Ten hams.
Twelve oak buckets.
LL 1, 1, 2 2 3' 4' 5 seven cases paints.
Eight cases ale.
Two kegs olives.
Seventeen coils rope.

Three bolts sail duck.
One box blocks.
One tub sundries.
Two kegs nails.
One hundred and fourteen oil, wine, and liquor casks, filled with water.
Two surf boats.
AT Eight bbls. wine.
LL Six hhds. shooks.
Do. Sixteen cases muskets.
Do. 1, 2 two cases coopers' tools.
Do. nine cases brass rods.
42 Thirty-four oars.
One lot of boat spars.
Fourteen cans lard.
Two kegs white lead.
Two cans paint.
LL Ten cases cottons.
Do. One hundred and twenty-three bales cottons.
[IT] 1416. One bale woolens.
LL One case hardware.
Do. Ten furnaces and boilers.
Do. Ten barrels rum.
Do. Three do. vinegar.
One bbl. syrup.
A large lot of firewood.

Stores.

Ten bbls. beef and pork.
Five half-bbls. do. do.
One do. tongues.
One do. varnish.
One do. dried apples.
Twenty bbls. bread and potatoes, onions, &c.
Two bags coffee.
Four boxes maccaroni and vermicelli.
Two do. tobacco.
One do. ale.
One do. gin.
Two do. olive oil.
One do. assorted fruits.
43 Two cases Florida water.
One box pepper.
Three do. cheese.
One do. clams.
One do. tapioca.
One do. catsup.
Two do. raisins.
One do. milk.
One do. herrings.

One do. sundries.
One keg olives.
One bbl. vinegar.

Ship stores remaining on board.

One case carpenter tools.
One box eggs.
One firkin barley.
One case soap.
One lot matches.
Half-bbl. split peas.
One case sundries.
Two boxes raisins.
One box herrings.
One case starch.
One do. tea.
One firkin sago.
One bale lampwick.
One keg olives.
One drum figs.
44 One box cocoa.
One do. tobacco.
One do. vermecelli.
One do. brandy.
One do. gin.
Six lamps.
One box pickles.
One do maccaroni.
One bdl. brown sugar.
One do. white do.
One chest tea.
One bag coffee.
One can lard.
Two rolls rubber hose and force pump.
Two bbls. tar.
Half-bbl. pitch.
One box sardines.
One bbl. bread.
One do. onions.
One do. beans.
Two coils speir yarn.
One do. rope.
Eleven water casks.
Four small boats.

EUGENE McGRATH,
J. M. SIMPSON,
Inspectors.

"Endorsed:" Report of examination of cargo of b'k Weathergage.

45 OUTWARD FOREIGN MANIFEST.

Report and manifest of the cargo, laden at the port of New York, on board the Am. barque Weather Gage, whereof Edward Mitchell is master, bound for Hong Kong, via Ambriz—men, 14—N. Y., Sept. 12, 1860. Tons, 365 4/5.

Marks.	Numbers.	Packages and contents.	Quantities.	Value of domestic merchandise.	To be landed at—
			Lbs., gallons, &c.		
E E	----------	Nine pkgs., cont'g twelve coils rope.	1,327 lbs.	106 16	Ambriz.
	16, 16, 8	One bale, cont'g six pcs. canvass.	264 yds.	42 24	
	134	Three boxes, cont'g forty kegs paint.	400 lbs.	26 40	
	5	One box, cont'g four cans spirits turpentine.	4 galls.	2 60	
		One box, cont'g ten cans linseed oil.	5 "	5 00	
		Ten hhds., cont'g 1,000 kegs powder.	5,000 "	715 00	
		Seventeen tcs., cont'g 220 kegs powder.	3,300 "	429 00	
		One bale blankets----------	100 pair.	109 25	
		Two pieces brown sheetings-	83 yds.	4 79	
		Eight anchors----------	512 lbs.	31 40	
		One chain, and one tierce cont'g chain.	1,126 "	82 86	
		Eighty-five bales striped cotton goods.	7,950 yds.	5,366 99	
		Ten cases blue drills-------	8,461 "	824 99	
		Seven bales denims -------	6,862 "	566 12	
		Eight -- " ---- "----------	6,686 "	668 60	
		Eight bales striped checks--	6,874 "	824 88	
		Fifteen bales striped cotton goods.	15,685 "	1,294 01	
		Sixteen cases, cont'g 320 muskets.	320 "	848 01	
		Three cases, cont'g 375 sheets copper.	1,769 lbs.	353 80	
		Two kegs copper nails-----	400 "	80 00	
		Nine cases -- "-- rods -----	----------	420 00	
		Ten bbls. N. E. rum-------	403 gals.	134 36	
		Eight bbls. red wine ------	242 "	301 50	
		Two boxes Florida water---	2 doz.	7 00	
		Seventy whiskey bbls. of fine navy bread.	7,576 lbs.	363 00	
		Five whiskey bbls. pilot bread.	487 "	27 42	
		Two wrought iron boilers)	815 lbs.	88 32	
		Two---- " ---- " furnaces)			
		Two---- " ---- "--boilers)	780 lbs.	84 32	
		Two---- " ---- " furnaces)			
		Six----- " ---- "--boilers)	2,190 "	249 71	
		Six----- " ---- " furnaces)			
		Two boxes, cont'g pipes, [illegible.]	----------	21 50	
		Eighty-five bbls. rice------	20,120	1,050 88	
		One hundred half bbls rice.	13,969	743 33	
		Fifty-five bbls. mess beef---	----------	608 99	
		Two barrels prime pork-----	----------	29 00	

Report and manifest, &c—Continued.

Marks.	Numbers.	Packages and contents.	Quantities.	Value of domestic merchandise.	To be landed at—
			Lbs., gallons, &c.		
		One hundred oil casks, filled with water.		796 35	
		Four bbls. extra southern flour.		29 80	
		Three bbls. corn meal		11 25	
		Three "..beans	11 $\frac{3}{56}$ bush.	13 07	
		Two "..crush sugar	404 lbs.	40 40	
		Six boxes Scotch ales	12 doz.	27 00	
		Two kegs Spanish olives		8 00	
		Three barrels cider vinegar		13 50	
		One case preserved meats	4 doz.	20 00	
		One.."..cont'g 100 half boxes sardines.		35 75	
		Forty b'dles iron hooks, 1¼ and 1½.	2,000	80 50	
		Ninety-six white oak hooks Four bhdes., cont'g heads for do.		350 00	
	1 and 2	Two boxes, cont'g coopers' tools.		59 34	
		Two 25-ft. large boats Two 20-ft. life-boats Thirty-two oars for same. Ten small spars."." Four rudders and tillers Twelve iron swivels	492 ft.	584 34	
		One hundred pcs. timber, 4 × 6.	3,600 ft.	74 50	
		Seven hundred and sixty-two pcs. pine board.	8,382 "	133 23	

EDWARD MITCHELL.

Master's oath on clearing outward.

DISTRICT AND PORT OF NEW YORK:

I, Edward Mitchell, master of the bark Weather Gage, bound from the port of New York to Hong Kong, *via* Ambriz, do solemnly, sincerely, and truly swear that the manifest of the cargo on board the said bark, now delivered by me to the collector of this district, and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said bark previous to her sailing from this port, I will immediately report the same to the said collector. I do also swear that I verily believe the duties on all foreign merchandise therein specified have been paid or secured according to law, and that no part thereof is intended to be relanded

within the United States; and that if, by distress or other unavoidable accident, it shall become necessary to reland the same, I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such distress or accident may happen. And said cargo is truly intended to be landed in the port of Hong Kong, via Ambriz. So help me God.

EDWARD MITCHELL.

Sworn to before me this 1st day of Sept., 18 0.

———— ————, *Collector.*

Endorsed: Manifest b'k Weather Gage, Hong Kong, via ————.

46 OUTWARD FOREIGN MANIFEST.

Manifest of part of cargo, shipped by Anthony Fuero, on board the Am. bark Weather Gage, whereof Edward Mitchell is master, bound for Hong Kong, via Ambriz, N. Y., Sept. 12th, 1860.

Marks.	Numbers.	Packages and contents.	Quantities.	Value of domestic merchandise.
			Lbs., gallons, &c.	
L L	----------	Nine (9) pkgs., cont'g (12) coils rope	1,327 lbs.	106 16
	16, 16, 8	One (1) bale, cont'g six (6) pcs. canvass.	264 yds.	42 24
	$1, $3, $4	Three boxes, cont'g forty (40) kegs paint.	400 lbs.	26 40
	$2	One (1) box, cont'g ten (10) cans linseed oil.	5 galls.	5 00
	$5	One box, containing four (4) cans sp'ts turpentine.	4 "	2 60
		Ten hhds., cont'g 1,000 kegs powder	5,000 lbs.	715 00
		Seventeen (17) tcs., cont'g 220 kegs do	3,300 "	429 00
		One (1) bale blankets	100 pr.	109 25
		Two (2) pcs. brown sheetings	83 yds.	4 79
		Eight (8) anchors	512 lbs.	31 40
		One chain, (1,) and (1) one tierce cont'g chain.	1,126 "	82 86
		Eighty-five (85) bales striped cotton goods.	79,511 yds.	5,366 99
		Ten cases (10) blue drills	8,461½	824 99
		Seven (7) bales denims	6,862 "	566 12
		Eight (8) " "	6,686 "	668 60
		Eight bales (8) striped checks	6,874 "	824 88
		Fifteen (15) bales stripped cotton goods	15,685 "	1,294 01
		Sixteen (16) cases, cont'g 320 muskets	320 "	848 00
		Three cases, cont'g 375 sheets copper	1,769 lbs.	353 80
		Two (2) kegs composition nails	400 lbs.	80 00
		Nine (9) cases comp. rods	----------	420 00
		Ten (10) bols. N. E rum	403 gals.	134 36
A T	----------	Eight (8) bbls. red wine	242 "	301 50
L L	----------	Two (2) boxes Florida water	2 doz.	7 00
		Seventy (70) whisky bbls. of fine navy bread.	7,576 lbs.	363 00
		Five (5) whisky bbls. pilot bread	487 lbs.	27 42
		Two (2) wrought iron boilers Two (2) " furnaces for do.	815 lbs.	88 32

Manifest, &c.—Continued.

Marks.	Numbers.	Packages and contents.	Quantities.	Value of domestic merchandise.
			Lbs., gallons, &c.	
		Two (2) wrought iron boilers	780 lbs.	84 32
		Two (2) "" furnaces for do.		
		Six (6) "" boilers	2,190 lbs.	249 71
		Six (6) "" furnaces		
		Two (2) boxes, cont'g pipe [illegible]		21 50
		Eighty-five (85) bbls. rice	20,120 lbs.	1,050 88
		One hundred (100) half bbls. do	13,969 "	743 33
		Fifty-five (55) bbls. mess beef		608 99
		Two (2) bbls. prime pork		29 00
		One hundred (100) oil casks, filled with water.		796 35
		Four (4) bbls. extra southern flour		29 80
		Three (3) do. corn meal		11 25
		Three (3) do. beans	11 $\frac{9}{62}$ bush.	13 07
		Two (2) do. crush sugar	404 lbs.	40 40
		Six (6) boxes Scotch ale	12 doz.	27 00
		Two (2) kegs Spanish olives		8 00
		Three (3) barrels cider vinegar		13 50
		One case (1) preserved meats	4 doz.	20 00
		One (1) do., cont'g 100 half boxes sardines.		35 75
		Forty (40) bdls. iron hooks, 1½ and 1¾ in.	2,000	80 50
		Ninety-six (96) white oak hooks		
		Four (4) hhds., cont'g heads for do.		350 00
	1 and 2	Two (2) boxes, cont'g coopers' tools		59 34
		Two (2) 25-ft. large boats		
		Two (2) 20-ft. life-boats		
		Thirty-two (32) oars for same	492 ft.	584 34
		Ten (10) small spars ""		
		Four (4) rudders and tillers		
		Twelve (12) iron swivels		
		One hundred (100) pcs. timber, 4 × 6	3,600 ft.	74 50
		Seven hundred sixty-two (762) pcs. pine board.	8,382 "	133 23

ANTONIO FUERO.

FRANK MORTIMER.

District and Port of New York:

I do solemnly, sincerely, and truly swear that the within manifest contains a full, just, and true account of all the goods, wares, and merchandise shipped by Anthony Fuero on board the within-named vessel, and that the quantities and value of each article are truly stated according to the actual cost or the values which they truly bear in this port at this time. And I further swear the said merchandise is truly intended to be exported to Ambriz.

Sworn to this 12 Sept., 1860, before me.

H. BARNEY,
Collector.

FRANK MORTIMER.

Endorsed: Exhibit No. 3. Bark Weather Gage, Mitchell—Hong Kong, &c.—master. Refused clearance. Manifest of bark "Weather Gage."

47 *To all whom these presents shall come, greeting:*

Know ye that I, J. T. Woodberry, of the city, county, and State of New York, sole owner of the bark or vessel called the "Weather Gage," of the burthen of 365 $\frac{4}{95}$ tons, or thereabouts, for and in consideration of the sum of twelve thousand dollars, lawful money of the United States of America, to me in hand paid before the sealing and delivery of these presents, by John Morris, of New York, aforesaid, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented, and paid, ha bargained and sold, and by these presents do bargain and sell, unto the said John Morris, his executors, administrators, and assigns, the whole of the said bark or vessel, together with the whole, the mast, bowsprit, sails, boat, anchors, cables, and all other necessaries thereunto appertaining and belonging; the certificate of the register of which said bark or vessel is as follows, to wit:

48 No. 465.

In pursuance of an act of Congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels," Jacob T. Woodberry, of the city, county, and State of New York, having taken and subscribed the oath required by the said act, and having sworn that he is the only owner of the ship or vessel called the Weather Gage, of New York, whereof is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Sag Harbor, State of New York, in the year 1852, as per register No. 376, issued in this port Oct. 1st, 1856, now cancelled, property changed, vessel altered, and remeasured. And said register having certified that the said ship or vessel has two decks and three masts, and that her length is one hundred and fourteen feet eight inches, her breadth twenty-six feet six inches, her depth thirteen feet three inches, and that she measures three hundred sixty-five $\frac{4}{95}$ tons, and that she is a bark, has a round tuck, and a billet head. And the said Jacob T. Woodberry having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said bark has been duly registered at the port of New York.

Given under our hands and seals, at the port of New York, this fifth day of September, in the year one thousand eight hundred and sixty.

49 To have and to hold the said bark, vessel, and appurtenances thereunto belonging, unto him, the said John Morris, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of the said John Morris, his executors, administrators, and assigns, forever. And I, the said J. T. Woodbury, have promised, covenanted, and agreed, and by these presents do promise, covenant, and agree, for myself, my heirs, executors, and ad

ministrators, to and with the said John Morris, his heirs, executors, administrators, and assigns, to warrant and defend the said bark, vessel, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

50 In testimony whereof, I, the said J. T. Woodberry, have hereunto set my hand and seal this fifth day of Sept., one thousand eight hundred and sixty.

J. T. WOODBERRY. [L. S.]

Sealed and delivered in presence of—
WM. H. BROWN.

STATE OF NEW YORK, *ss:*

Personally appeared before me J. T. Woodberry, and acknowledged the within bill of sale to be his free act and deed.

In testimony whereof, I have hereunto set my hand and seal [SEAL.] of office this sixth day of September, in the year one thousand eight hundred and sixty.

WM. H. BROWN,
Not. Public.

Endorsed: Weather Gage. Bill of sale, from Ex. No. 3, to John Morris. Custom-house, N. Y., Sept. 11, 1860. Rec'd for record at 1½ p. m., and recorded in book 32, B. S. R. I., page 35. S. B. Gregg, cl'k. J. White, D. C. Sept. 11, '60, ½ past one p. m.

51 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Monday, the fourth day of February, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE BARK WEATHER GAGE, HER TACKLE, &c., &c., and LADING. } 16, 162.

This case having been heard on the pleadings and proofs therein, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the said bark, her tackle, apparel, furniture, and lading, mentioned in the libel therein, be, and the same are hereby, condemned and forfeited, pursuant to the prayer of the libel, and that the libellants recover their costs in the said action.

And it is further ordered that, unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the clerk issue a writ of *venditioni exponas* to the marshal of the district, ret'ble on the fifth day of March next.

SAM'L R. BETTS.

52 Endorsed: Vol. 16, No. 162. United States district court for the southern district of New York. The United States *vs.* The bark Weather Gage, her tackle, &c., and lading. Jas. J. Roosevelt, U. S. D. A. Beebe, Dean & Donohue, proctor for cla'm't. Decree of condemnation and forfeiture. Filed the fourth day of Feb'y, 1861.

53 U. S. district court.

BARK WEATHER GAGE and CARGO *ads.* THE UNITED STATES.

SIR: Please to take notice that the claimant appeals from the decree herein and every part thereof.

Dated Feb'y 5, 1861.

Yours, &c.,

BEEBE, DEAN & DONOHUE,
Proct. for Cl'm't.

Hon. J. J. ROOSEVELT, *for U. S.*

Endorsed: 16, 162. Dist. court U. S. Bark Weather Gage, &c., and cargo, *ads.* United States. No. of appeal. Beebe, Dean & Donohue, for app'l'nt. I admit service of within notice. Feb'y 5, 1861. J. J. Roosevelt, U. S. att'y. Filed Feb'y 5, 1861.

54 Of the United States of America for the southern district of New York, in the second circuit.

THE UNITED STATES, lib'l'nts and appellees, *vs.* THE BARK WEATHER GAGE, her tackle, &c., and cargo, JOHN MORRIS, cl'm't and appellant. } Bond for costs.

Know all men by these presents that we, John Morris and John B. Fogerty, are held and firmly bound unto the above-named libellants and appellees in the sum of two hundred and fifty dollars, to be paid to the said libellants; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the fifth day of February, in the year of our Lord one thousand eight hundred and sixty-one.

Whereas the above-named claimant hath prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the fourth district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and an-

swer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JOHN B. FOGERTY. [L. S.]

Sealed and delivered, and taken and acknowledged, this 5th day of Feb'y, 1861, before me.

GEO. T. BETTS,
U. S. Com'r.

55 UNITED STATES OF AMERICA,
Southern District of New York, ss:

John B. Fogerty, being duly sworn, doth depose and say that he resides in the city of N. Y., at No. 33 St. Mark's Place; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN B. FOGERTY.

Sworn to this fifth day of Feb'y, A. D. 1861, before me.

GEO. T. BETTS,
U. S. Com'r.

Endorsed: Vol. 16, page 162. U. S. circuit court. The U. States *vs.* The bark Weather Gage, &c, and cargo. John Morris, cl't and app'l'nt. Bond for costs on appeal. Beebe, Dean & Donohue, app'l'nt proctors. Filed the 5th day of Feb'y, 1861.

56 *To the honorable the circuit court of the United States for the southern district of New York, in the second circuit.*

The petition of appeal of John Morris respectfully shows:

That the United States, on the —— day of ———, 1860, filed their libel against the bark Weather Gage, her tackle, apparel, and furniture, and the lading thereof, in the district court of the United States for the southern district of New York, praying that said vessel and cargo might be condemned and sold as having been fitted out for the slave trade, on which libel process was issued and the vessel and cargo arrested.

That petitioner duly appeared and claimed said vessel and cargo as owner and carrier, and that claimant duly filed his answer herein, denying all the allegations of the libel.

That such proceedings were had in said cause that the cause was duly heard by said district court, and on the fourth day of Feb'y,
57 1861, the said court decided and decreed that said vessel, her tackle and lading, was forfeited to the United States.

That your petitioner is advised and believes that said decree and every part thereof is erroneous and should be reversed, and your petition appeals from said decree and every part thereof.

Wherefore, your petitioner prays that the said circuit court may be pleased to hear the said cause anew on new allegations and proofs,

and on the proofs already in, and to reverse and annul the said decree and every part thereof, and to restore the claimant to all he has lost in the premises.

BEEBE, DEAN & DONOHUE,
Proctors for Cl'm't.

Endorsed: Circuit court U. S., south. dist. of N. Y. Bark Weather Gage and cargo *ads.* The United States. Petition of appeal. Beebe, Dean & Donohue, proct's for app'l'nt. Filed Feb'y 7, 1861.

58 I admit service of a copy of the within this day.
Dated Feb'y 7, 1861.

J. J. ROOSEVELT,
U. S. Dist. Att'y.

59 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this second day of May, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, William W. Russell, to testify and the truth to say, on the part and behalf of the claimant and appellant in a certain suit or matter of controversy, now depending and undetermined, in the circuit court of the United States for the southern district of New York, wherein the United States are libellants and the bark Weather Gage, her tackle, &c., are respondents. And the said William W. Russell, being about the age of forty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William W. Russell, and he did thereupon depose, testify, and say as follows, viz:

I am a shipping and commission merchant, and have been so for the last twenty-odd years, in this city. I am familiar with the China and East India trade. Vessels going there, unless stopping at an intermediate port, go in ballast, except where the owners, like Grusold

& Co., ship their own cargoes to sell. I have chartered such
60 vessels to take cargoes all the way from Cape de Verd islands to ports all the way down the coast on both sides the Atlantic. The coal taken out by the government is in great part taken out in such vessels. I have chartered vessels in that way to take out stores for the government.

Cross-examined by Mr. Wilcoxson for the government.

I loaded the Weather Gage two or three years ago for, I think, for George W. Hall, of Providence; I think they owned her at the time. I don't know the claimants of the vessels, nor the owners of the cargo, and have no interest in the proceedings.

WM. W. RUSSELL.

Sworn to before me this 3rd May, 1861.

R. E. STILWELL,
U. S. Com'r.

61 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this third day of May, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, United State court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Antonio Tuero, to testify and the truth to say, on the part and behalf of the claimant and appellant, in a certain suit or matter of controversy now depending and undetermined, in the circuit court of the United States for the southern district of New York, wherein the United States are libellants and the bark Weather Gage, her tackle, &c., are respondents. And the said Antonio Tuero, being about the age of thirty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Antonio Tuero, and he did thereupon depose, testify, and say as follows, viz:

I am a merchant; I own the cargo on the Weather Gage; I know

Louis Leivas; I have seen the paper produced, and marked A, before, signed by myself and Leivas. The two subsisting witnesses are in Africa, at Ambois. Before this cargo, I shipped one under contract A; paper marked B is the letter I got in reference to it; I
62 shipped this cargo in the Weather Gage, under contract A. I do not speak English. When I came here I brought a person with me to go in the vessel with the goods, and buy the goods here; that person went to England to buy another invoice, where the Weather Gage was detained. Ambois is not a slave place, and has not been for 14 years; it has a custom-house, and Portuguese troops. I do not know anything about the vessel; I chartered her to go on her way to China and leave the goods there, for the sum of $4,000. The agreement for the charter was made by the person that went to England. I was not to have anything to do with the Weather Gage after she discharged her cargo at Ambois. Mr. Leivas is a merchant at Ambois, and agent for the copper mines (English) there; he has nothing to do with the slave trade; neither have I.

ANTONIO TUERO.

Sworn to before me this 3rd May, 1861.

R. E. STILWELL,
U. S. Com'r.

63 To the testimony of which witness the district attorney (Mr. Wilcoxson) in due time, and before the taking of the same, objected, on the ground of the incompetency of the witnesses; and it was agreed that if the circuit court should hold the testing competent the district attorney should have an opportunity, before the decision of the cause, to cross-examine; and if not so produced, the depositions to be rejected.

64 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing *deposition* is, and the fact is the *witnesses* are material and necessary in the cause in the caption of the said deposition named, and that the same are taken under the rules of the Supreme Court of the United States.

I further certify that a notification of the time and place of taking

the said *deposition* signed by me was made out and served on the advance party to be present at the taking of the said *deposition*, and to put interrogatories, if he or they might think fit.

I further certify that on the 2d and 3rd day of May, in the year of our Lord one thousand eight hundred and sixty-one, I was attended by counsel on both sides, and by the *witnesses*, who were of sound mind and lawful age, and the *witnesses* were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the *depositions* were by me reduced to writing in the presence of the *witnesses*, and from their *statements*, and after carefully reading the same to the *witnesses* they subscribed the same in my presence. I have retained the said *deposition* in my possession for the purpose of the court, for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said *depositions* and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this third day of May, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-fifth.

R. E. STILWELL,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

65 Endorsed: Vol. , page . United States circuit court for the southern district of New York. The United States, libellants, *vs.* The bark Weather Gage, respondent, &c. Deposition on the part of the respondent taken before R. E. Stilwell, United States commissioner, on the 2d and 3d day of May, 1861. Filed the 17th day of May, 1861, in open court.

66 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK,

City, County, and State of New York, ss:

Be it remembered that on this twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E. Stilwell a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at

my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, James L. De Graw, to testify and the truth to say, on the part and behalf of the libellant and appellees in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of New York, wherein the United States are libellants and appellees, and the bark Weather Gage, her tackle, &c., are respondents and appellants.

And the said James L. De Graw, being about the age of forty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James L. De Graw, and he did thereupon depose, testify, and say as follows, viz:

Q. What is your business?

A. Entrance and clearance clerk in the naval office, in the port of New York, and have been such about seven years. My duties are to enter and clear all vessels, foreign and coastwise, after it has been done in the collector's office; all the clearance of foreign vessels pass under the inspection of my desk; and when I am absent
67 they come under my notice afterwards. They all pass under my actual inspection. I enter them all in the books, and the amount of fees paid on them.

Q. Did you ever know of a vessel being cleared, while you have been in the naval office, for Hong Kong, or any other port in China, by the way of Ambriz, or any other port on the west coast of Africa?

A. No, sir; there has never been such a case.

Q. In your official position have you ever become, to any extent, and if so, to what extent, familiar with the slave trade, as carried on from this port of New York to the west coast of Africa?

A. Yes, sir; as regards the vessels suitable for that trade and the cargo.

Q. Do you know the usual tonnage of vessels going from the port of New York to the west coast of Africa to engage in the slave trade?

A. I know the usual tonnage of most of those that have gone, and have been engaged in that trade.

Q. Mention some of them.

A. The bark Cora, brig Storm King, bark Kate. I don't mean to say that she went, but she has been condemned here.

(Obj. to.)

Q. Was she condemned as a slaver?

A. Yes, sir.

Q. Proceed with the names of the others.

A. The ship Erie, brig Bonita, bark Orion, the ship Mon-
68 tauk, the schooner Josephine, and the bark Buckeye. They all cleared from this port.

Q. What was the tonnage of those vessels?

A. The general tonnage is from 200 to 400 tons. Two or three ships have averaged over that.

Q. Do you now refer to the vessels you have named?

A. Yes, sir; and others.

Q. I will now ask you what is the usual tonnage of vessels clearing from the port of New York for the west coast of Africa to engage in the slave trade?

(Obj. to.)

A. They range from 250 to 400 tons.

Q. Has it been any part of your official duties to ferret out the trade and method of fitting out and equipping vessels in this port to engage in the slave trade?

(Obj. to.)

A. Yes, sir; as to obtaining all the information I could in regard to them.

Q. Are the people of any particular nationality; and if yea, of what nationality most frequently engaged in the slave trade in this port?

(Obj. to.)

A. Yes, sir; they are generally Spanish and Portuguese en-
69 gaged, either directly or indirectly.

Q. Having reference to the party in whose name the vessel to be equipped is registered, what is the usual mode of precedure when persons of the nationalities last mentioned by you fit out a vessel for the slave trade from the port of New York?

(Obj. to.)

A. In regard to registering vessels, it appertains particularly to the registry desk.

Q. What I inquire is, particularly, do the parties last named appear as owners of their vessels on the custom-house papers?

(Obj. to.)

A. No, sir.

Q. State fully all you know on that subject.

(Obj. to.)

A. Such vessels are generally registered in the name of the master of the vessel as sole owner.

Adjourned to 4 p. m., as Mr. Donohue has a case in court.

I add to my answer, or some person who acts as manager or
70 supercargo.

Q. I wish to know as to whether the vessel is registered here as an American vessel?

(Obj. to.)

A. I have never known or heard of such a thing as a vessel being registered here without the owner swearing he was an American citizen.

Q. When you say they are registered in the name of the master as sole owner, is he the real owner?

(Obj. to.)

A. So far as my knowledge goes, I should say not.

Q. What is the object of an engagement of that kind?

(Obj. to.)

A. I consider the object to be to facilitate the obtaining the papers and clearing the vessel. In cases of emergency, the vessel being over-

hauled, it can be made to appear that she is all right as to character and ownership.

Q. Do you mean to say that Spaniards and Portuguese, being the true owners of vessels, procure them to be registered here in the name of American master or supercargoes, for the purpose of
71 taking advantage of the American flag in prosecuting the slave trade in such vessels?

(Obj. to.)

A. That is my view of it.

Q. Your view of the way or one of the ways of carrying on the slave trade from this port?

(Obj. to.)

A. Yes, sir; the other parties are usually taken on board as passengers, to the best of my knowledge, from steam tugs.

Q. What is the usual tonnage of a vessel going from this port in the China trade?

A. They range from 8 to 1,200 tons. I should say the average was about a 1,000 tons.

Q. Do you know the people engaged in this port in shipping business by reputation or personally?

A. Yes, sir; I do. I know most of them both ways, and am doing business with them constantly.

Q. Is there such a man as John Morris in that business here?

(Obj. to.)

A. No, sir.

Q. Do you know anybody by the name of John Morris?
72 A. I never heard of one, except in connection with the vessel.

Q. Do you know Anthony Inero, or ever see him?

A. No.

Q. Look at the manifest and say how that manifest compares with the fitting out a slaver so far as your experience goes.

A. It is a very complete one in every respect for engaging in the slave trade.

Q. Do you know Edward Mitchell?

A. No, sir, I do not.

Q. Do you know J. T. Woodbury?

A. No, sir.

Cross-examined by Mr. Donohue.

Q. Have you ever been on board a vessel with slaves?

A. I have been on board of southern steamers; I don't know whether there were slaves on board or not. I have been to sea in a sailing vessel. I have made a voyage to Central America and back; and up and down the Pacific; I mean by that that I went to San Francisco and back by the way of Isthmus. I went from here in the
73 brig Henrico; from Panama up in bark John Ritson; from San Francisco down a British steamer; from Aspinwall home in steamer Cherokee; I have not had what I should call any other sea-

going experience; I have never fitted out a slave, and was never interested in a slaver; I have been in the custom-house near eleven years; have been entrance and clearance clerk, as near as I can recollect, near seven years; I have never been engaged in any other business since I have been in the custom-house; I have seen the bark Cora; I have seen her at the Atlantic dock, and have seen her at anchor in the stream; I do not know who owned her; I can't tell in whose name she stood without referring to books and papers; I do not know of my own knowledge who owned the Storm King, nor in whose name she stood; I have never seen the Storm King; I have seen the Kate several times, both before and after; I saw her soon after her arrival at this port, and some weeks before her seizure, and have seen her
74 as late as the first of January, I think; I last saw her in the Atlantic dock; I think the ship Erie did not clear from this port for the coast of Africa; I don't know who was her owner, or who stood on her register; I can't tell who was owner of the Bonita when she last cleared from here; I last saw the Bonita the day she left port; I was not on board of her, and had not been on board of her before her leaving; I can't name the parties owning the Orion when she left here last; the Montauk did not clear for the coast of Africa when she went from here; she cleared for a whaling voyage; I think the words were for North and South Atlantic; I saw the Montauk, and was on board of her several times two days previous to her sailing; she had cargo on board; she had casks of water, and provisions, packages, and a large quantity of casks filled with water; I made a complaint against her; I should not consider it usual for a whaler to have some cargo on board; I consider it suspicious that a
75 whaler should have that cargo on board; I have never seen her since she so cleared; I have been on board the Josephine perhaps three or four times; Josephine was seized, but never tried; I never saw her after she left last time; I have *I have* seen the Buckeye, but was never on board of her; I think she left here the early part of 1860; the Bonita cleared from here last summer, July or August; Josephine cleared the latter part of June, 1860; Montauk cleared early in the year 1860, I should say in the spring; the Storm King cleared about May, 1860; the tonnage, I think, was between 400 and 500 tons; can't specify the tonnage of the Montauk; she was over 400; have never seen the Buckeye since she left here; have never been on the coast of Africa; I have lodged information against the vessels spoken of, Cora, Storm King, Kate; the Erie I gave some information of; I gave information of Bonita; I did not of the Orion; I did of the Montauk and Josephine, Buckeye; I did not of the
76 Weather Gage prior to her seizure.

Q. Do you of your own knowledge know the nationality of the owners of either of the vessels you speak of on your dirat?

(Obj. to.)

A. I do not of my own knowledge. The oaths of ownership never came before me, nor do the register bonds, nor do the crew bonds.

JAMES L. DE GRAW.

Subscribed and sworn to before me this 22d May, 1860.

R. E. STILWELL, *U. S. Com.*

77 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, John B. Forgerty, to testify and the truth to say, on the part and behalf of the libellants and appellees, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of New York, wherein the United States are libellants and appellees, and the bark Weather Gage, her tackle, &c., are respondents and appellants. And the said John B. Forgerty, being about the age of ——— years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John B. Forgerty, and he did thereupon depose, testify, and say as follows, viz:

I am an attorney and counsellor at law in the city of New York. I believe I signed a bond for costs on appeal which is annexed to the apostles. I do not know John Morris, and never heard of such a person till this morning.

JOHN B. FORGERTY.

78 *Cross-examined, May 23rd,* 1861.

Mr. Donohue requested me to sign the bond. I met him here in the building. He said he wanted me to sign it. He said I should never be troubled about it, and I signed it. He told me nothing about it, and I did not ask him anything about it. Until I received the subpœna to attend on this examination, I had no recollection of the Weather Gage being mixed up with it in any way, and had no knowledge of the pending of this action.

JOHN B. FORGERTY.

Sworn to before me this 23rd May, 1861.

R. E. STILWELL,
U. S. Com'r.

79 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Sidney S. Norton, to testify and the truth to say, on the part and behalf of the libellant and appellee, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of New York, wherein the United States are libellants and appellees, and the bark Weather Gage, her tackle, &c., claimants and appellants. And the said Sidney S. Norton, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Sidney S. Norton, and he did thereupon depose, testify, and say as follows, viz:

I am foreign entry and clearance clerk in the custom-house in this city, and have been so 2 y'rs and a half, about. I am familiar with the trade from this port with China and the East Indies. Ships are the greater portion of vessels that go to the East Indies.

80 Occasionally a bark clears. I have cleared a schooner for Japan; also a steamer to China—I think two. The usual tonnage of vessels in that trade are from eight to twelve hundred tons—perhaps larger.

Q. What class of vessels usually sail from this port to China?
(Obj. to.)
A. Clipper ships.
Q. What tonnage are these clipper ships usually?
(Obj. to.)
A. From 8 to 1200—perhaps larger, I am only guessing at it—as near as I can recollect or judge.
Q. Have you had pass under your observation all the vessels that have cleared from this port for China during the last two years and a half, as clearance clerk of the custom-house?
(Obj. to.)
A. I have.

81 Q. Look at this bill of sale of the Weather Gage attached to the apostles in this case. Have you ever known a vessel of so small a tonnage as that of the Weather Gage, therein described, to clear from the port of New York for the China trade?

A. I think not.

Q. Will you state what is the usual course of voyage of vessels in the China trade?

(Obj. to.)

A. I don't know what course they go.

Q. Do they go in ballast usually?

A. No.

Adjourned to 10 a. m. the 22nd inst., as Mr. Donohue's counsel for claimants is engaged in a case in court.

WEDNESDAY, *May* 22*nd*, 1861.

Counsel present.

Q. Do they ever go to China or East Indies in ballast?

A. I never cleared one to East Indies or China in ballast. Henry C. Smith was the custom-house broker; a man, said to be the captain, was with him.

82 Q. Who cleared the slaver Erie?

A. I don't know.

Q. Who cleared the Kate?

A. I think Mr. Smith was the broker, and Bonita also, and the Storm King, I think. I think he did not the Montauk; I think he did the Josephine. I don't know the claimant in this case.

Q. Do you know the shipping merchants of New York generally by reputation?

A. I do.

Q. Is there any such person known to you as John Morris engaged in the shipping business here?

(Obj. to.)

A. I don't know.

Q. Did you ever know John Morris to appear on the custom-house papers, except in the case of the bark Weather Gage?

A. No.

Q. Is there such a man in business in the port as John Morris, to your knowledge?

(Obj. to.)

Q. Do you know such a man as Edward Mitchell?

(Obj. to.)

A. No.

Q. Or Anthony Tuero?

(Obj. to.

83 A. No.

Q. Had you made any report to the collectors regarding the bark Weather Gage before she was seized?

(Obj. to.)

A. Yes, sir.

Q. How long before?
A. About ten days.
Q. What was that report?
(Obj. to.)
A. To look out for the Weather Gage.
Q. What led to your making that report?
(Obj. to.)
A. I can say from certain hints that had been given to me, and certain things that I learned.

Cross-examined by Mr. Donohue.

Q. Do you know the bark Sarah?
A. Yes.
Q. What is her tonnage?
A. I think it is 260 tons. She has just returned from Wampoa in February last. She did not clear for there; she cleared for Singapore. The Weather Gage was seized upon my information. I know
84 nothing about vessels, other than American, employed in East India coasting trade. I have no knowledge of the size or character of vessels going from other ports besides this for that trade. I have never been to sea. I presume the Sarah carried a cargo from here to Singapore; to the best of my knowledge she did. I do not know where the ship Erie went from when she went to the coast of Africa; I do not know whether she went from this port. The business of a custom-house broker is to attend to entering and clearing vessels and goods. Smith that I speak of is a custom-house broker, and has been so, he says, some 20 years. The duty of Mr. De Graw is to check the clearance when brought to him by the broker; there is no oath to be taken before him, and no papers signed. Before a register is obtained for a vessel the party claiming to own must come there and sign, and take the oath of ownership, and must reside in this port, and also a register bond he must sign; the oath must
85 be taken before a deputy collector, and the registry clerk prepares the bond. I do not prepare those papers, or swear the party.

S. S. NORTON.

Sworn to before me this 22nd May, 1861.

R. E. STILWELL,
U. S. Com'r.

86 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in

addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing *deposition* is, and the fact is, the *witnesses* are material and necessary in the cause in the caption of the said deposition named, and that the same were taken under and pursuant to the rules of the Supreme Court of United States.

I further certify that ——— notification of the time and place of taking the said *deposition* signed by me was made out and served on the ——— to be present at the taking of the said *deposition*, and to put interrogatories, if he or they might think fit.

I further certify that on the 21st and 22nd day of May, in the year of our Lord one thousand eight hundred and sixty-one, I was attended by Mr. Wilcoxson and Mr. Donohue, counsel for the respective parties, and by the *witnesses*, who were of sound mind and lawful age, and the *witnesses* were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the *depositions* were by me reduced to writing in the presence of the *witnesses*, and from their *statements*, and after carefully reading the same to the *witnesses* they subscribed the same in my presence. I have retained the said *deposition* in my possession for the purpose of filing the same in the court, for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said *deposition* and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-fifth.

R. E. STILWELL,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

87 Endorsed: Vol. , page . United States circuit court for the southern district of New York. The United States, libellants, &c., *vs.* The bark Weather Gage, her tackle; &c., resp'ts and appellants. Deposition on the part of the libellants taken before R. E. Stilwell, United States commissioner, on the 21st and 22nd day of May, 1861. Record on Cir. C't U. S., or appeal, S. N. Filed the 24th day of May, 1861.

88 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK,
City, County and State of New York, ss:

Be it remembered that on this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E.

Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, John Munro, to testify and the truth to say, on the part and behalf of the respondents and appellants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of New York, wherein the United States of America are libellants and appellees, and the bark Weather Gage, her tackle, apparel, &c., is respondent and appellant. And the said John Munro, being about the age of forty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John Munro, and he did thereupon depose, testify and say as follows, viz:

I am a shipmaster by profession, and have been going to sea ever since 1830. Have been engaged in China trade about eight years on the coast. There are a large number of American vessels engaged in that business on the coast. The most desirable size for that trade is from 250 to 400 tons.

Cross-examined.

That is the customary size—some smaller and some larger.
89 The last vessel I commanded on the coast was 641 tons, but she was rather too large for the business. I have only commanded this vessel on that coast, and was there about three years and four months. She was in the coasting trade all the time I commanded her. I have also been in the brig Harry on that coast. She was in the coasting trade there on the China coast and in those seas. She was 225 tons. I was on her two years and eight months. She was and an American vessel, and belonged to Talbot, Olyphant & Co., of New York. The other vessel I was on the coast in was a government ship, the Constellation. I was boatswain on her three years and eight months on the cruize. These are all the vessels I have been on on that coast. Seven or eight vessels, the names of which I recollect as being on the coast while I was there, the tonnage ranged from 200 to 400 tons. I don't know John Morris, and I don't know what this claim is. I don't know Anthony Tuero; I know nothing about this case at all.

Direct resumed.

Large vessels nowadays in the tea trade take coal out, which serves as ballast. So little freight it is difficult to ballast. Smaller vessels sometimes take ice out; at other times they take freight for intermediate ports. I have heard of vessels going out stopping at the west coast of Africa, but don't know of any particular instance. Vessels going to Buenos Ayres with lumber frequently take a cargo of horses from there to India, and load up with rice and cotton from there to China.

JOHN MUNRO.

Sworn to before me this 23d May, 1861.

R. E. STILWELL,
U. S. Com'r.

UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Alfred C. Yates, to testify and the truth to say, on the part and behalf of the respondent and appellants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of New York, wherein the United States of America are libellants and appellees, and the bark Weather Gage, her tackle, &c., are respondents and appellants. And the said Alfred C. Yates, being about the age of thirty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Alfred C. Yates, and he did thereupon depose, testify, and say as follows, viz:

I have been to the coast of Africa, to all the ports, and many of the places from Monrovia to the river Gaboon. It is the west coast; at Gaboon the south coast commences about there; I have never been to Ambriz; this is on the south coast; I think it probable the British

subjects do the large part of the trade on the west coast from
92 Monrovia to the Gaboon river; it is not usual for English and Dutch vessels to come and deliver their cargoes on that coast, and then proceed around the Cape of Good Hope; we have vessels the government charter with coal for Fernando Po, and other stations, that land their cargoes and proceed to other places for cargo; they don't load with cargoes, these on the coast; I am in the Mountain Eagle, as master.

Cross-examined by Mr. Wilcoxson.

I mean government charters vessels here to take coal and other stores to their naval station on the west coast of Africa. Those vessels, when they have discharged their cargoes, proceed to other ports to get business. Sometimes they pass around the Cape of Good Hope, and sometimes to St. Thomas, West Indies. There is nothing to load up with to make a return cargo with from where they unload, and go from there for business. I know nothing of the slave trade.

Direct resumed by Mr. Donohue.

In order to get a return cargo from the coast the vessels must go out there to trade.

93 *Cross resumed by Mr. Wilcoxson.*

In the African trade, in making the voyage there and back, we sell the outward cargo and exchange it for the produce of the country. Vessels sometimes go and sell a cargo on the African coast for gold dust and specie, and come away in ballast.

A. C. YATES.

Sworn to before me this 23d May, 1861.
R. E. STILWELL, *U. S. Com'r.*

94 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday, the 27 day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES, lib'l'nt and app'lee,
vs.
THE BARK WEATHER GAGE, HER TACKLE, &C., resp't and app'l'nt.

The appeal in this case, from the district court, coming on to be heard—

Mr. Evarts reads testimony from the apostles on the part of lib'l'nt and appellee.

Mr. Stoughton reads testimony from the apostles on part of cl'm't and app'l'nt.

Mr. Evarts reads on part of lib'l'nt.

Mr. Evarts is heard on the part of libellant and appellee.

95 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Wednesday, the 29 day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Sam'l Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES, lib'l'nt and appellee,
vs.
THE BARK WEATHER GAGE, HER TACKLE, &C., respondent and libellant.

This cause, having been adjourned over from the 27th inst., is continued.

Mr. Stoughton is heard on the part of appellant.

Mr. Evarts is heard on the part of appellee.

Cur. adv. vult.

96 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the sixth day of November, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES, appellee,
vs.
THE BARK WEATHER GAGE, HER TACKLE, &C., and CARGO, appellant.

This cause having been heard on the pleadings and proofs, and argued by E. W. Stoughton, esq., for the appellant, and W. M. Evarts, esq., and E. Delafield Smith, esq., for appellee, and due deliberation being had, it is now ordered, adjudged, and decreed, that the decree of the district court herein be affirmed.

S. NELSON.

Endorsed: The United States *vs.* Bark Weather Gage and cargo. Decree. E. D. Smith, def't's att'y. Filed Nov. 8, 1862.

97 *To the honorable the Supreme Court of the United States:*

The petition of appeal of John Morris, claim't of the bark "Weather Gage," her tackle, apparel, furniture, and cargo, respectfully shows:

That on the first day of October, 1860, the United States of America, by their attorney, James J. Roosevelt, esq., filed their libel in the district court of the United States for the southern district of New York, against the said bark Weather Gage, and her tackle, apparel, furniture, and cargo, for the reasons and causes in the said libel stated, to wit, that the said vessel had been fitted and prepared for the slave trade; and for said reasons and causes therein stated, praying that the said vessel, her tackle, apparel, furniture, and cargo, might be condemned and forfeited.

That on the 30 day of October, 1860, the claimant, as owner of said vessel, her tackle, apparel, and furniture, and owner of the cargo, intervened for said vessel, her tackle, apparel, and fur-
98 niture, and cargo, and answered said libel, denying all the facts and circumstances stated in the libel.

That the cause was duly tried before said district court, and on the 4th day of Feb'y, 1861, the said court did decide and decree that the said vessel and her tackle, apparel, furniture, and cargo, should be condemned as forfeited to the United States for the causes stated.

That the claimant duly appealed from the said decree to the circuit court of the United States for the southern district of New York, in the second circuit, and that the said cause was duly tried and heard by said circuit court; and that, after due deliberation, the said circuit court, on the sixth day of November, 1862, decided and decreed that the decree should be affirmed.

That petitioner claims that the said decree was erroneous and should be reversed, and the petitioner appeals therefrom to the Supreme Court of the United States, and prays that the said
99 court may proceed to hear anew the said cause on the pleadings and proofs already taken, and such proofs as may hereafter be taken; and that the court would be pleased to reverse, annul, and altogether hold for nothing the said decree, and that the claimant may be restrained to all things which he has lost by means of the premises.

Endorsed: Bark Weather Gage, &c., *ads.* United States. Appeal. We admit due service of a copy of the within. Dated Nov. 8, 1862. E. Delafield Smith, U. S. dist. att'y. Filed Nov. 8, 1862.

100 Supreme Court of the United States of America for the southern district of New York, in the second circuit.

UNITED STATES OF AMERICA *vs.* THE BARK WEATHER GAGE, HER TACKLE, APPAREL, FURNITURE, and CARGO. } Bond for costs.

Know all men by these presents that we, John Morris and Robert McCormack, of the city of Brooklyn, are held and firmly bound unto

the above-named United States of America in the sum of five hundred dollars, to be paid to the said United States; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the —— day of October, in the year of our Lord one thousand eight hundred and sixty-two.

Whereas the above-named John Morris has prosecuted his appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named John Morris shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JOHN MORRIS. [L. S.]
ROB'T McCORMACK. [L. S.]

Sealed and delivered, and taken and acknowledged, this 31 day of Oct., 1862, before me.

JOHN A. OSBORN,
U. S. Com'r.

101 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Robert McCormack, being duly sworn, doth depose and say that he resides at 129 Johnson st., Brooklyn: that he is worth the sum of fifteen hundred dollars over and above all his just debts and liabilities.

ROBERT McCORMACK.

Sworn to this 31 day of Oct., A. D. 1862, before me.

JOHN A. OSBORN,
U. S. Com'r.

Endorsed: U. S. circuit court. United States *vs.* The bark Weather Gage, &c. Bond for costs on ——. Beebe, Dean & Donohue, proctor. Approved and ordered on file. Wm. D. Shipman, judge. Filed this 8 day of Nov., 1862.

102 *Citation.*

By the honorable William D. Shipman, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To the United States of America:

Whereas John Morris, claimant of the bark Weather Gage and cargo, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in

favor of you, the said United States of America, against the said bark Weather Gage and cargo, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December, 1862, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 29th day of October, in the year of our Lord 1862, and of the Independence of the United States the eighty-seventh.

WM. D. SHIPMAN,
Judge.

Endorsed: Lodged Nov. 8, 1862.

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U. S. Supreme Court,

IN ADMIRALTY—ON APPEAL.

THE BARK "WEATHERGAUGE," &c., *Appellant,*

vs.

THE UNITED STATES, *Appellee.*

LIBEL.

The *first count* of the libel in this case was framed under the 1st section of the act of March 22, 1794. (1st vol. Stats. at Large, p. 347.)

The second count, under the 2d section of the act of April 2, 1818. (3d vol. Stats. at Large, p. 450.)

The scope and purpose of these two sections are substantially the same. They prohibit the building, fitting, preparation, &c., of any ship for the purpose of carrying on any trade or traffic in slaves; and they declare that all ships so built, fitted, or prepared, &c., their tackle, &c., shall be forfeited. The libel commences at fol. 2, and avers, in substance, that some person did, on the day of , 1860, fit, equip, load, and otherwise

prepare the " Weathergauge," for the purpose of carrying on a trade in slaves, &c. The libel contains no averment of seizure of the vessel within this District.

The facts relied on by the Government were, that the proof made out a suspicious fitting out.

THE CLAIM.

The claim is at fol. 18, and is sworn to by John Morris, as owner of the vessel, and as carrier of the cargo. To this claim no exception was interposed, nor was any evidence whatever introduced contradicting his averment of ownership. Besides, his ownership is affirmatively proved. He must, therefore, be regarded as owner.

Conkling's Ad. Pr. &c., p. 544.

THE ANSWER.

The answer of the claimant denies every allegation of the libel charging an illegal purpose in the fitting out of the " Weathergauge."

POINTS FOR APPELLANT.

First Point.—The burden of proof is upon the Government to show affirmatively that the " Weathergauge" was fitted out, &c., for the purpose of carrying on the slave-trade.

1st. Because this traffic is a most heinous offence against religion, morals, and the law of nature.

2d. Because by statute it has been declared piracy.

3d. Because the proceeding is for the enforcement of a severe forfeiture.

The legal presumption, therefore, is that the allegations of the libel are untrue, and that the fitting out of the bark was for a lawful purpose.

SECOND POINT.—As to the kind and quantity of proof, upon which alone a forfeiture can be declared.

1st. The mere fact that the bark was bound for the coast of Africa, with such a cargo on board as is usually taken there for the purposes of lawful trade, can raise no legal presumption against her. Upon such a case the law would presume her voyage innocent, however much ignorance or prejudice might suspect the contrary.

2d. It is true that a lawful cargo is consistent with an illegal purpose to engage the vessel containing it in the slave-trade on reaching the African coast; but to forfeit or convict upon that ground, there must be positive proof of such guilty purpose. It is the *preparation* of the vessel, and the *purpose* with which this is done, which constitute the offence; and this guilty purpose must be affirmatively made out by such proof as shall leave no reasonable doubt on the subject.

The Emily and Caroline, 9 Wheaton, 381, 389.

U. S. *vs.* Gooding, 12 Wheaton, 460, 472, &c.

Schooner Catharine, 2 Paine, 751, &c.

If the cargo and equipments of the vessel are all innocent in their own nature, a forfeiture may

nevertheless be decreed, *provided there be positive proof of a guilty intention to employ her in the slave-trade.*

The Plattsburg, 10 Wheaton, 133, 140.

It was only by disregarding these principles—which are as ancient as the law itself—that the court below was enabled to pronounce the decree of forfeiture, from which this appeal was taken.

THIRD POINT.—We have briefly stated the nature and measure of the proof necessary to establish the forfeiture demanded by the government in this case. We will now examine the evidence and the circumstances relied upon to sustain the decree.

First. There was nothing in the *destination* of the bark indicating an unlawful purpose.

1st. She was bound for Hong-Kong by way of *Ambriz*, a port on the African coast.

This was a suitable point at which to stop upon such a voyage.

Testimony of *Ware*, for government, fol. 46.
Testimony of *Machado*, for clt., fol. 56.
Deposition of Russell in Cir. Ct.

2d. *Ambriz* belongs to the Portuguese, where they have a custom-house, and exact duties.

See fols. 42 to 44, 47, 53, 54.

It is improbable that a cargo would be sent to that port, and duties paid upon it, if it were intended to be exchanged for slaves.

Besides no slaves are shipped from that port, nor at any point within less than about 100 miles of there.

See fols. 54, 55.

3d. The vessel and cargo were consigned to Louis Leivas, Superintendent of the English mines at *Ambriz*, and there is no pretence that he was ever in any manner concerned in the slave traffic.

Second. There was nothing in the *size* of the bark to indicate that she was intended to be employed in an unlawful trade. She was of the usual tonnage of vessels sent to the Southern African coast upon legal voyages.

See fols. 44, 53.

Third. Every article composing the cargo of the bark was entered upon her manifest, thus showing that there was no intent to conceal anything taken on board.

Fourth. There was nothing in the bark, her outfit, equipments, or cargo, which was not entirely suitable for a lawful voyage, or in any respect inconsistent with the purpose of prosecuting a lawful trade.

This is fully conceded by the court below in the opinion there pronounced.

See opinion.

Fifth. The government called but three witnesses—*Simpson*, *Ware*, and *Norton*. Of these *Ware* only was sworn for the purpose of casting doubt upon the lawfulness of the voyage. In this the government entirely failed, for he testified that the vessel, her outfit, and cargo, were such as he had been accustomed to send to the coast of Africa for purposes of lawful trade.

The Court is referred to his evidence, which will be found fully to sustain the proposition above stated, and this, too, is conceded in the opinion of the Court below.

It is very evident that those engaged in prosecuting this proceeding originally intended to have urged that the temporary deck of the bark, and the surf boats and boilers found on board, were circumstances of suspicion; but in addition to the fact that that deck was constructed before *Morris* purchased or thought of purchasing the vessel, it was proven by *Ware* and others that such a deck was frequently constructed for lawful purposes; and it was also established that surf boats and boilers like those on board the Weathergauge were useful on the coast of Africa —the boats for landing cargo, and the boilers for starting palm oil.

Indeed, it will appear from the testimony of the witnesses *Ware* and *Machado*, who have had large experience in the African trade, that every article of equipment and of cargo was entirely suitable for purposes of lawful traffic upon the African coast. This cannot be disputed, and was conceded in the opinion to which reference has already been made.

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FOURTH POINT.—Upon what grounds, then, was the decree of forfeiture based? and upon what proof is it sought to be sustained?

> In the opinion of the Court below, it is said "that "the proofs in this case raised grounds of reason- "able suspicion that the bark was not *bona* "*fide* owned by Morris; that she was not fitted "out and employed upon the voyage represented "for her at the custom-house, *but upon some* "*other and different enterprise*, which was im- "properly concealed from the collector," &c.

What this "*other different enterprise*" was, or was to have been, the Court below did not declare. It entertained *a suspicion* which it conceived the claimant should have removed, and because this was not done, legal presumptions were disregarded, and a guilty purpose fixed upon the Weathergauge, not merely in the *absence* of proof to warrant it, but in utter hostility to the evidence introduced—not by the claimant only—but by the government itself.

It is therefore respectfully submitted that the decree of condemnation should be reversed.

E. Carrington
Leonard Kelly

THE UNITED STATES,
vs.
THE BARK "WEATHERGAUGE."

Appeal in Admiralty, Oct. 7, 1862.

NELSON, C. J.

The libel in this case was filed to declare the condemnation and forfeiture of the Weathergauge and cargo, for having been fitted out to be employed in the slave-trade, in violation of the Acts of Congress, March 22, 1794, and April 20, 1818.

The case may be said to be a close one on the facts, and we have retained it some length of time for consideration, being in doubt whether the proof fairly maintained the conclusion which the mind could not avoid coming at upon the suspicious nature of some of the facts in the record.

As it respects the arrangement of the interior of the vessel, and the character of the cargo, as stated by one of the most experienced and intelligent witnesses, they may as well indicate an intent to enter upon a legal as an illegal voyage; and if there was nothing else in the case, the decree should be for the claimant. But there are other facts in the record which cannot be overlooked, and which, in our judgment, and after considerable reflection, turn the case against him.

This claimant, John Morris, who bought the vessel, and paid $12,000 for the same, and sets up that he is owner of the vessel and carrier of the cargo, is a myth. Nobody, for aught that appears in the case, knows him, or even his

full name. Woodbury, who, it is said, sold the vessel to him, is not produced. His partner, Schmidt, proves his handwriting to the bill of sale, and the payment of the money. Morris disappears, and is not again heard from. Whether any such man ever had existence is more than doabtful. According to the manifest, Edward Mitchel was master of the vessel. He is not produced, nor have we any account of him. He must have been Morris, master, if he had an existence, and could have given us some information of that individual, as well as of himself.

Antonio Tuero who purports to have been shipper of the cargo was produced on the part of claimant but does not known Morris or Mitchell—nor does he give us any account of his own connection with the ship, or with whom he contracted for the shipment of the cargo.

In our judgment, the proof was such on the part of government, as to throw the onus upon the claimant to clear up the mysteries and suspicions thickly surrounding the transaction, and which, if honest, could have been readily cleared up. All the parts unexplained have a settled conviction that the charge in the libel against the vessel and cargo is true.

Decree below affirmed.

U. S. DISTRICT COURT.

DECEMBER TERM, 1860.

THE UNITED STATES,
vs.
THE BARK "WEATHERGAUGE" and CARGO, JOHN MORRIS, CLIENT.

Minutes No. 79½, pp. 18 *and* 23. *Clerk's Book of Proofs B*, p, 155.

BETTS, J.—The libel claim and answer filed in this cause, correspond in all essential features with the pleadings in the preceding case of the U. S. *vs.* The Bark Kate. The United States demand the forfeiture of the vessel and cargo for having been prepared and employed in the slave-trade in violation of the acts of Congress, of March 22, 1794, and April 20, 1818. The libel was filed Oct. 1, 1860. The vessel was offered for clearance for a voyage to Hong-Kong, China, *via* Ambriz on the coast of Africa. A clearance was refused her at the custom-house and she was seized by the collector and libelled on the above charges, Oct. 1, 1860.

The proceedings in this case being nearly contemporaneous, as well as resting upon facts and circumstances strongly similar with the principles of law governing the case of the Kate, the decision in that case will also control this, and particulars of indirect and presumptive evidence there recognized by the courts will be admitted to like force and effect in this decision.

The direct and positive evidence given by the government in support of this seizure, and the averments in the libel, cannot, as is forcibly argued by the counsel of the claimant, justify even the arrest of the vessel and cargo,

much less their condemnation and forfeiture, for nothing more is established by positive proof than that the bark was destined to Hong-Kong, by the way of Ambriz, laden with a cargo, which, in the language of the main witness for the government, who has carried on trade from this port to the West Coast of Africa, for nine years, would, in his opinion "*be as likely to go for legal as illegal purposes.*" The witness (Ware) above referred to, has been frequently on the coast, personally, in the prosecution of his business, and thinks the construction of a partial *between-deck*, laid in the bark, might be proper and useful to her in a fair trade, and he has recently laid such deck in one of his vessels. If, then, the case presents evidence *criminating* the adventure in question, it must be derived from the indirect and circumstantial proofs in the cause apart from that furnished by the vessel herself.

Starting upon the proposition that the direct testimony in the case is alike consistent with the purpose to make an honest voyage, as an illicit one, I am free to admit that the habit of this Court, and I think the general tenor of adjudications in other tribunals, has been to presume the undertaking to have been innocent, and to dismiss the libel for want of preponderating testimony on the part of the libellants establishing a guilty intent in the preparation of the voyage.

In the adoption of that doctrine little or no heed was given to circumstances which did not present a visible, tangible, and material manifestation of the unlawful intent of the voyage charged, exhibited in the outfit of the vessel in respect to means especially adapted to lading on board or transporting slaves, provisioning or securing them in their transit, and preparations of like character.

The onward progress and rapid augmentation of the traffic for several years past, has demonstrated that slave-

traders can put out of sight all palpable insignia of their object, and yet drive the business with appalling success. The courts no longer find manacles, or slave decks, or even materials particularly necessary to their construction carried out in the vessel, cooking apparatus with brick and cement to erect them, or indeed scarcely any one of the former preparations accompanies the voyage, and characterizes unmistakeably its purpose. The vessels leave their home ports, free of all accusatory symbols, of an illicit project, and first show their true character when laden with slaves, or in the act of taking them on board.

It is manifest that the acts of Congress were framed with the intent to reach and punish the criminal purpose of slave-traders at their inception at home and long before they are expressed by open acts or tokens (*United States* vs. *Gooding*, 12 Wheat. 460 ; *United States* vs. *Morris*, 14 Peters 475). (In the last instance this rule of interpretation was applied in a capital case.)

To effectuate the policy and humane purposes of these laws, it is necessary, therefore, to look beyond the outward and seeming signification of the fitments of a vessel destined to the coast of Africa, or the particulars of her lading. It is palpable that owners and agents will sedulously secure them the semblance of probity whatever their real character may be ; and not unfrequently an excessive effort to clothe an adventure with habiliments of innocency will afford a clue to the real turpitude beneath.

I think it has been satisfactorily shown in the full discussion of the preceding case of the Kate, that the notorious course of the slave-trade for several years past has been to employ vessels of about the burthen of this, and chiefly, if not entirely, laden with outward cargoes fitted to the commerce with Africa, and possessing facilities of transmitting, on arrival at favorable points on the coast, almost instantaneously, the honest exterior under which

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she left this country, into a receptacle for hundreds of suffering and smothering slaves. This habit and course of business become, therefore, under the dominancy and sanction of legal rules of evidence, an item of proof which must be regarded by courts in searching for and adjudging the purposes with which the voyage, put in question, has been undertaken.

To aid the inquiry, the law allows the libellants to apply to the apparent integrity of the adventure, evidence wholly insufficient of itself to overcome the seeming honesty it wears, but sufficient to raise a reasonable presumption that such appearance is feigned and undeserving of credit. This evidence may attain to more than *reasonable suspicions*, that illicit purposes subsist beneath those honest appearances, and then the parties concerned in the enterprise are bound to furnish evidence wiping away such suspicions. The authority of the rule and its applicability to this class of cases, was largely considered in the preceding case of the Kate.

The evidence to this point is not so varied or of so impressive a character as that given in the last case, but yet, in my judgment, it is of a nature to awaken a marked distrust of the truthfulness and legality of this adventure it was represented and claimed to be at the custom-house.

And first, in my judgment, there was *reasonable cause of suspicion*, well justifying the collector in seizing the vessel, because her manifest and outfit for Ambriz, directly contiguous to slave regions, with a cargo adapted equally to a slave trade as to an honest one, and her voyage apparently to terminate at Hong-Kong, without at that time, or on the trial, any proof being furnished that the vessel was really destined to the latter port at all, or that any such course of trade subsists in our commerce. There was no proof of the instructions given to the master for the voyage, nor was the master or any member of the crew examined

by the claimant to verify the lawfulness of the enterprise. The claimant proffered the shipper of the cargo in court as a witness to be examined by the libellants, but declined to examine him on his part. It belonged to the claimant to repel the suspicions existing in the circumstances of the case, and the libellants were not placed under any necessity to adopt the shipper of the cargo as their witness.

Again, the ship-broker (Schmidt) who negotiated the sale to the claimant, testifies that he does not know the claimant (Morris), nor where he resides, nor his business, nor whether he is a merchant or man of property, or whether he purchased the vessel for himself or some third person, and has only seen him in the street. He (Schmidt) prepared a charter of the vessel for $550 per month for twelve months; the charterers to officer her and pay all her expenses. He does not state who were the charterers, their residence or business pursuits. The charter was not put in evidence, nor any party to it examined. It was alleged, and not contradicted on the trial, that Morris' name is not in the directory of this city or Brooklyn, and that his counsel have not disclosed, on application to them, his place of residence, to the libellants.

It was proved that Mr. Woolsey, the vendor of the vessel to Morris, resides in this city. He was not called by the claimant to verify the integrity of the claimant in the purchase or use of the vessel.

I am constrained to say in this case, as in that of the Kate, and upon the reasons entering into that decision, that the proofs in this case raised grounds of reasonable suspicions that she was not *bona fide* owned by Morris; that she was not fitted out and employed upon the voyage represented for her at the custom-house, but upon some other and different enterprise, which was improperly concealed from the collector; and that it is to be presumed her actual claimant has in his power the evidence to show

her true ownership and character, and the purposes and destination of the voyage she attempted to enter upon. In not producing that evidence in court in his justification, the presumption of law is that it would disprove the defence now set up, and evince the unlawfulness of her preparation and employment.

Judgment of condemnation against the vessel and cargo.

In the Supreme Court of the United States.

DECEMBER TERM, 1864.

No. 120.

IN PRIZE.

THE BARK WEATHERGUAGE, her tackle, &c., and cargo, JOHN Morris, Claimant and Appellant, *vs.* THE UNITED STATES.	Appeal from the circuit court of the United States for the southern district of New York.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.

TITIAN J. COFFEY,
Special Counsel for United States.

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1864.

No. 120.

THE BARK WEATHERGUAGE, her tackle, &c., and cargo, JOHN MORRIS, Claimant and Appellant, *vs.* THE UNITED STATES.	Appeal from the circuit court of the United States for the southern district of New York.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

On the 1st of October, 1860, the United States district attorney filed in the United States district court, at New York, a libel of information against the bark Weatherguage, her tackle, apparel, and furniture, and lading, in a case of seizure and forfeiture, allegiı g—

First. The equipment, loading, and other preparation of said vessel, within the port of New York, for the purpose of carrying on a trade in slaves, &c., within the terms and contrary to the provisions of the first section of the act of Congress of 22d March, 1794, &c.; and,

Second. The fitting, equipment, loading, and other preparation of said vessel in the port of New York, for the like purpose, within the terms and contrary to the provisions of the second section of the act of 20th April, 1818, &c.

A monition having issued from the district court, the bark, ıer tackle, &c., and lading, were attached on the 1st of October, 1860.

On the 13th of October, 1860, John Morris, alleging himself to be owner of the vessel and carrier of the cargo, intervened for the interest of himself as owner and carrier, and made claim to the said vessel, her tackle, &c, averring that he was in possession of the vessel, her tackle, &c., when they were attached, and that he was the true and *bona fide* owner

of the vessel, her tackle, &c., and true and lawful bailee *thereof*, as owner and claimant.

On the 4th of February, 1861, the district court, having heard the evidence and arguments, decreed condemnation and forfeiture of the bark, her tackle, &c., and lading, pursuant to the prayer of the libel; from which decree the claimant appealed to the United States circuit court, and that court, having heard further evidence and argument, on the 8th of November, 1862, affirmed the decree of the district court; whereupon the claimant appealed to this court.

Application having been made at the custom-house at New York for a clearance for the bark Weatherguage by Henry C. Smith, a custom-house broker, and a man, said to be Mitchell, the captain of the vessel, for a voyage to Hong Kong, in China, by way of Ambriz, a point on the western coast of Africa, the clearance was refused by the instructions of the collector, and these proceedings commenced for her forfeiture on the grounds set forth in the libel. Certain facts had excited the suspicions of the custom-house officer in regard to her real destination, which led to the refusal of a clearance when it was asked for, and to her subsequent seizure, (Rec., pp. 13, 35, Norton.)

Her outward foreign manifest, sworn to by Edward Mitchell, as master, on the (probably) 12th (although printed 1st) of September, 1860, and the shipper's manifest, sworn to as shipped by Anthony Fuero or Tuero, on the same date, declare her to be bound for Hong Kong *via* Ambriz, and report her as laden with a cargo valued at nearly $19,000. The vessel was unladen by the inspector of the custom-house, under orders from the surveyor and collector, and (although the unlading disclosed a large quantity of stores not manifested) the cargo was found to contain all the articles entered on the manifest; (See manifest, Rec., pp. 17, 18, and Exhibit No. 1, Rec., 14, 15, 16.)

The Weatherguage was, therefore, fitted, equipped, loaded, and otherwise prepared, within the port of New York, for a voyage avowedly to a place on the western coast of Africa, near to, if not within the region where the slave trade is well known to be prosecuted.

The first section of the act of 22d March, 1794, (1 Stat. at L., 347,) and the second section of the act of 20th April, 1818, (3 Stat. at L., 450,) the violation of which the libel in this case alleges, both subject to condemnation and forfeiture any ship or vessel in the predicament of the Weatherguage, as above stated, provided she were fitted, equipped, loaded or otherwise prepared *for the purpose* of carrying on any trade or traffic in slaves to any foreign country; or procuring therefrom the inhabitants thereof to be transported to any foreign country, to be sold and disposed of as slaves; or of procuring any negro, mulatto, or person of color therefrom, to be transported to any port or place to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor.

The question in this case, therefore, is, whether the Weatherguage was fitted, &c., *for the purpose* of engaging in the slave trade; and that intent and purpose is the whole subject of inquiry.

What constitutes the substance of the offence, and that, when the progress of the suspected enterprise has become indicative of its true purpose, the offence is complete and the forfeiture incurred, has been settled by this court:

"It is the preparation of the vessel and the purpose for which she is to be employed that constitute the offence and draw after it the penalty of forfeiture. As soon, therefore, as the preparations have progressed so far as clearly and satisfactorily to show the purpose for which they are made, the right of seizure attaches." (The Emily and Caroline, 9 Wheat., 381; The Plattsburgh, 10 Wheat., 133; U. S. *vs.* Gooding, 12 Wheat., 460.)

Whether, in this case, the intent and purpose was to take a slave cargo on board or only to carry the outward cargo to supply the means of procuring it for another vessel—to be herself the principal trader, or only a tender or supply ship a any stage of the traffic—the offence is equally complete under the statute. For it prohibits, not merely the transportation of slaves, but the being employed in the business of the slave trade. (The Alexander, 3 Mas., 175; U. S. *vs.* the Catharine, 2 Paine, 721; U. S. *vs.* Morris, 14 Pet., 464.)

We affirm, then, that the character of the preparations for the projected voyage of the Weatherguage were such as to indicate clearly the purpose of that voyage to be the carrying on a trade in slaves.

It is obvious that the projectors of the voyage had determined to give it the appearance of an honest and lawful enterprise. This was necessary to escape the vigilance of the law officers then aroused by the boldness and success of the slave traders in projecting and setting on foot their guilty expeditions from New York. We are thus compelled to discover the real purpose of the voyage from acts and preparations carefully designed to conceal it. But it is impossible so to cover crime with the garb of innocence as to conceal entirely its features, and, when discovered, their natural repugnance makes the imposture more glaring. The incongruities which the attempt to hide an unlawful purpose beneath the forms of a lawful enterprise have developed in this case, furnish the means of exposing and punishing that purpose.

TESTIMONY SHOWING GUILTY PURPOSE OF THE ENTERPRISE.

The testimony discloses the following facts:

By bill of sale, dated 5th September, 1860, acknowledged 6th September, 1860, one J. T. Woodbury, representing himself to be "of the city, county, and State of New York," purported to sell the bark Weatherguage to "John Morris, of New York," for "the sum of $12,000," (Rec., pp. 21, 22.)

She was a bark of about 365 tons, 114 feet 8 inches long, 26 feet 6 inches wide, 13 feet 3 inches deep, with two decks and three masts. This is about the size, measurement, and build of vessels used in the slave trade, (DeGraw, Rec., 29.)

As already stated, the outward foreign manifest, sworn to by Edward Mitchell, who purports to be captain, on the 12th of September, 1860, represents her as bound for Hong Kong *via* Ambriz, with a crew of 14 men, and a cargo valued at nearly $19,000. The captain swears that this manifest contains "a full, just, and true account of all the goods, &c., then actually laden on board said vessel;" that he will report any

additional cargo, and also that "said cargo is truly intended to be *landed in the port of Hong Kong*, via Ambriz, (Rec., pp. 17, 19.)

The shipper's manifest purports to report part of cargo shipped by Anthony Fuero or Tuero, embracing precisely the same goods, &c., contained in the manifest sworn to by the captain, and the oath, taken on the 12th of September, 1860, is, that "the said merchandise is truly intended to be exported to *Ambriz*," (Rec., pp. 19, 20.)

The vessel was thus loaded and the clearance demanded for the coast of Africa and China within six days after the purchase of the vessel, the two manifests representing under oath different destinations for the cargo.

EQUIPMENT, CARGO, &c.

The equipment of the vessel exhibited those features which are peculiar to vessels engaged in the slave trade. There was a temporary between-deck made of rough boards, not necessary to carry the cargo on board, about 5½ feet below the main deck. She had two "surf boats," besides four other small boats, which, it is worthy of remark, *were manifested*, with oars, rudders, tillers, &c.

The surf boats were covered, and had hatches. A large lot of lumber was stowed between decks, manifested as 100 pieces 4 by 6 timber, and 762 pieces pine boards; 17 coils of rope, three bolts of sail duck, eight anchors, cooper's tools, nails, and a variety of other things, all well known parts of the fitment of a slaver, and clearly indicating preparations for repairing damages, transferring cargo, and conducting all needful operations of the voyage away from ports or harbors where such supplies could be easily obtained, or where such methods of repairing damages or transferring cargo would be needless. As part of her fitment, though included as cargo, may be also noticed 12 swivels, and large quantities of muskets and powder, available for purpose of defence in an emergency, and well known to be used for trade in negroes, (Rec., pp. 8, 9, 14, 15, 17, 18.)

The cargo indicates the same purpose: 80 barrels of bread,

85 barrels and 100 half barrels of rice, 57 barrels mess beef and pork, 10 barrels flour, beans, meal, &c., 3 barrels vinegar, sixty fathoms of chain, 40 kegs paint, 10 cans linseed oil, 4 cans spirits turpentine, 96 bundles of white oak shucks, 4 hogsheads shucks for heads of casks, 2 boxes of coopers' tools, 114 casks filled with water, 10 furnaces and boilers, and a large lot of firewood, and 375 sheets of copper, are the usual and well-known outfit of a vessel engaged in the transportation of slaves. The other portions of the cargo are the usual articles of exchange for negroes—blankets, coarse cotton goods, muskets, powder, rum, wine, &c., (Rec., pp. 14, 20.) The manifest is proved to be "a very complete one in every respect for engaging in the slave trade," (DeGraw, Rec., 31.)

The unlading disclosed an amount and variety of the ship's stores, not embraced in manifest, such as are never supplied in such quantities for the use of the crew of an ordinary trading vessel. But they are generally found on slavers, (Rec., pp. 15, 16.)

DESTINATION.

Although the captain swears that the cargo "is truly intended to be landed at the *port of Hong Kong, via* Ambriz," we have seen that Tuero swears in the shipping manifest that it is to be landed at *Ambriz*. Tuero also swears, (Rec., 26, 27,) that he owned and shipped the cargo of the Weatherguage, and that he was not to have anything to do with the vessel after she discharged her cargo at Ambriz. It is fully proved that there is no trade from New York to Hong Kong, or any other port in China by way of Ambriz, or any other port on the west coast of Africa, and no vessel ever cleared from New York for such a route, (Rec., 10, 29.)

It is also proved that the usual tonnage of vessels going from New York to China ranges from 800 to 1,200 tons, averaging 1,000 tons, (DeGraw, p. 31; Norton, 34.)

The whole evidence clearly shows that the vessel was destined to the west coast of Africa, and not to Hong Kong, as pretended.

SUSPICIOUS CONDUCT OF PERSONS IN CONTROL OF VESSEL.

John Morris purported to reside in New York on the 6th of September, 1861, when the bill of sale of the vessel was acknowledged. No man of that name was then or afterwards known to be in the shipping business in the port of New York. Nor had the clearance clerks of the naval office and custom-house ever heard of a man of that name, (Rec., pp. 31, 35.) Neither Machado, the standing witness for the claimants of slave vessels, who had been engaged in the African trade since 1836, nor Monro, an old shipmaster in the China trade for eight years, knew Morris, (Rec., pp. 12, 38.) Even Schmidt, the ship broker and partner of Woodbury, who purports to sell the vessel to Morris for $12,000, knows nothing of Morris, or of his business, or even whether he lives in New York, or whether he is a go-between or owner. He had only seen him once, and then in the street, within two months before. (Rec., p. 11.)

When appeal was taken to the circuit court in his name, on 7th February, 1861, the petition was signed by his counsel, (Rec., pp. 24, 25,) and the bond then given for appeal, although drawn for his signature and seal, is executed only by the surety, Forgerty, (Rec., p. 23,) and Forgerty swears, more than three months afterwards, that he did not know Morris, *and had never heard of such a person* till that morning—that he had signed the bond because Mr. Donahue had requested him. (Rec., p. 33.) Woodbury, who was in town, and ought to have known Morris, was not called by the claimant, he being the proper person to prove the integrity of the purchase of the vessel. Judge Betts says it was alleged, and not contradicted, that Morris's name was not in the directory of New York or Brooklyn, and that his counsel would not, on application to them by the libellants, disclose his place of residence.

And yet this "myth," as Mr. Justice Nelson well calls him, is put forward, not only as owner and claimant of the vessel, but as bailee of the cargo!

Nor does Tuero, the alleged owner of the cargo, appear to better advantage. When the claim in the name of Morris is

first put in, he claims the cargo as carrier and bailee, and says nothing of Puero's ownership. He was not examined in the district court, and Judge Betts says the claimant declined to examine him there, but proffered him as a witness to the libellant, showing that he was then within reach. The claimant examined him in the circuit court. He then testified, "I do not know anything about the vessel. I chartered her to go on her way to *China*, and *leave the goods there*," and yet before the close of his testimony, he says, "I was not to have anything to do with the Weatherguage *after she discharged her cargo at Amboix*," [Ambriz.] (Rec., p. 27.) But his testimony is more significant for its omissions than for its contradictions. Although he says he chartered the vessel for $4,000, he does not state with whom he contracted—whether before or after the alleged purchase—nor does he give any satisfactory account of his connexion with the vessel. He says he owns the cargo. But he does not state where or when, or from whom he purchased it, nor to whom, either at Ambriz or Hong Kong, it was to be consigned or delivered. He was careful to furnish no clue by which any of these facts could be investigated. Judge Nelson states in his opinion, that he, (Puero,) does not know either Morris or Mitchell, the pretended owner and captain. He is an entire stranger in New York—a foreigner, probably Portuguese, with no known business connexions in New York or elsewhere, giving no account whatever of his residence or place of business. He is no more known than Morris, behind whose shadow he stands.

Can it be possible that this is the attitude which the owner of a cargo worth $19,000, engaged in a lawful and honest trade, would occupy, when that cargo was seized on the charge of complicity with the infamous slave trade?

Nor is the position of any other person connected with the enterprise less equivocal. Mitchell is put forward as master of the vessel, and, as such, swears to the manifest. He is not known to the custom-house officers, nor to any one else, so far as appears. He was not produced as a witness by the claimant, nor was any account given of his whereabouts. He too, hides behind the convenient shadow of Morris.

Although the manifest states that the crew consisted of fourteen men, (apparently a very large number for such a vessel and voyage, if lawful,) not one of them is produced by the claimant as a witness.

It is thus apparent, that of all the persons connected with or interested in the Weatherguage, and her proposed voyage, no one is brought forward to explain their suspicious appearance, or to vindicate their integrity, except Tuero, who only deepens the mystery. The name of John Morris alone is used as a cover for all, he being in fact as invisible as the rest.

The only known residents of New York, who had anything to do with preparing the vessel for the voyage, were Smith, the clearance broker, and Smalley, the stevedore. It is noticeable that both these persons have acted in their respective employments in fitting out other condemned slavers, as the Kate. (See Smith's evidence and conduct in case of the Kate.) Neither are the ship's papers, which might throw light on the character and purpose of the enterprise, produced. The bill of sale and manifests, having been presented at the custom-house, are within reach, and are therefore evidence. Tuero says he chartered the vessel. The charter was not put in evidence, nor its absence accounted for, nor were its contents proved. No instructions to the master were produced or proved; no bill of lading, letters to consignees or any parties interested, shipping articles or other papers, were known to be in existence.

Although the history of this vessel, her ownership, outfit, cargo, crew, and real destination are thus surrounded with suspicious facts from the time of her purchase until she was seized on the charge of being fitted out for the slave trade, and, although these suspicious facts all combine to force on the mind the conviction of her guilt, the owners of vessel and cargo, who alone have the means to explain and dispel the grounds of that conviction, and whose clearest interest it is to do so, have utterly failed even to attempt it.

On the whole case, the following propositions are submitted:

I.

The evidence fully and satisfactorily proves that the Weatherguage, when seized, was actually fitted out and laden in exact accordance with the requirements of the slave trade, and that she was prepared and intended to sail for a point on the western coast of Africa, where that trade is prosecuted. These facts suggest and sustain the reasonable suspicion that her destination and purpose were to engage in that trade. They therefore establish probable cause for her seizure.

II.

This reasonable suspicion is not repelled by the fact that the vessel was openly fitted out and attempted to be cleared for a port on the African coast, where it is alleged (but not admitted) that the slave trade is not prosecuted, with portions of her cargo equally fitted for the lawful or the slave trade, because, as already stated, that is one of the devices by which the slave traders are well known to attempt to escape from the vigilance of the law. Judge Betts has judicially decided, in the case of the bark Kate, that "slaving vessels are now employed in the trade, fitted out, and cleared at ports abroad, and in this country, openly carrying substantially like cargoes and equipments as those which pursue a lawful trade upon the coast of Africa."

III.

But the testimony in this case discloses facts so entirely inconsistent with the innocence of this vessel and cargo in the projected enterprise, that the reasonable suspicion of guilty purpose, founded on her admitted destination, equipment, and lading, is strengthened into a clear and satisfactory conviction of that guilty purpose. Some of the most prominent of these may be thus recapitulated:

A.

The purchase, equipment, loading, and complete preparation of a vessel so peculiarly fitted for the slave trade, all within the space of six days, for a voyage to China, by way of the west coast of Africa, being her first voyage in the hands of her new owner.

B.

The purchase of her, from a man living in New York, who could best vindicate the integrity of the transaction, but who is not produced by the claimant; and the purchase by a man, who, although his name is used as claimant, cannot be found, and is evidently "a myth."

C.

The utter failure of the real parties who claim under the name of Morris, to produce any evidence to show from whence or from whom the cargo was obtained; to whom, or where, or under what contract shipped; or to show what were the true purposes and destination of the voyage.

D.

The mysterious disappearance of the supposed captain and all of the crew after the seizure of the vessel, and the absence of evidence of his former character or pursuit.

E.

The unusually large number of men constituting the crew for a vessel of that size and character.

F.

The amount, variety, and costliness of the ship's stores, being far beyond the wants of the officers, and such as are never provided for an ordinary crew.

G.

The unexplained discrepancy between the oath of the captain and that of the shipper, as to the destination of the cargo; the former declaring it to be Hong Kong, and the latter Ambriz.

H.

The improbability of a voyage from New York to Hong Kong, touching at a port so far out of the route between those points, and so little resorted to for any commercial purpose.

I.

The improbability of a voyage from New York to China in a vessel of 365 tons: such voyages being usually made in vessels of more than twice that tonnage.

K.

The plain contradictions and significant omissions in the testimony of Tuero, the alleged owner of the cargo, and his ignorance as to the owner and master of the vessel.

L.

The improbability that he, a stranger in New York, should have chartered a vessel, the master and owner of which he did not know, had his cargo laden, and his shipping manifest presented at the custom-house, sworn to for a clearance, all within six days after that owner had purchased the vessel.

M.

The utter absence of information from whence he comes, where he resides, or what business connexions he has in New York or elsewhere, by which he, a foreigner, ignorant of our language, could engage in so large a commercial venture. To which may be added, that if he resided at Ambriz, and wished to purchase goods for that market, his nearest and most convenient point of purchase would have been in Europe, and especially his own country, whether Spain or Portugal.

N.

The failure to produce any of the ship's papers, except such as were in the custom-house, by which the real nature and purpose of the voyage might have been ascertained.

O.

The fugitive character and mysterious disappearance of all connected with the enterprise, from the owner down; the entire absence of all the usual agencies and connexions by which an honest commercial voyage is surrounded, and may be easily verified.

P.

The only commercial agents shown to have been connected with this projected voyage are a clearance broker and a stevedore, who, from their like connexion with other vessels seized and condemned as slavers, may be fairly presumed to form part of the slave trader's combination in New York.

Q.

To these facts may be added many others more or less suspicious, all furnishing evidence of guilt, in absence of the explanation which the claimant could and ought to have given, if the projected enterprise were innocent.

IV.

These accumulated proofs of a guilty purpose in the arrested voyage completely overbear any presumption of innocence which might be claimed from the asserted lawful character of the enterprise, and *of themselves* subject the vessel, &c., and cargo to forfeiture, unless the claimant can restore such presumption of innocence by explanatory evidence, which will destroy the force of these proofs.

V.

But the failure of the claimant to furnish such explanatory evidence, that evidence being peculiarly within his possession, greatly strengthens the force of the inculpatory evidence, and raises it to the character of clear and satisfactory proof.

In the Emily and Caroline, (9 Wheat., 381,) this court said, "There was no attempt whatever by the claimant to explain the object of these peculiar fixments, or to show that the destination of the vessels was other than that of the slave trade: we may *therefore* safely conclude that the purpose for which these vessels were fitting, was the slave trade," &c.

(See also 1 Stark. Ev., 34, 35; Taylor *on* Riggs, 1 Pet., 500; Will's Circumstantial Ev., 86; 41 Law Lib., 40; Rex *vs.* Burdett, 4 B. and A., 140; Josefa Segunda, 5 Wheat., 338; U. S. *vs.* Catharine, 2 Paine, 747; 1 Greenl. Ev., 37, cited at length in brief of The Sarah.)

These principles are especially applicable in cases where the question is one of *intention*, to be ascertained from acts and preparations; all of which were carefully moulded, and directed so as to conceal that intention, and give the transaction the semblance of a different one. The party alleging a guilty intention is necessarily compelled to extract the evidence of it from acts and preparations expressly designed to conceal it, and rely on such facts of suspicious aspect as accident, carelessness, or the natural incongruity between truth and falsehood may develop. Where the guilty purpose is hidden under the guise of a lawful enterprise with such skill and adroitness as the slave traders are well known to have exhibited, those suspicious facts are apt to be few and insignificant. When they *are* discovered and proved, their ordinary force ought to be greatly strengthened by the failure of a party on whom they are fastened to make full and frank explanation of them. And the force of such suspicions will increase in proportion as their explanation is easy to the party.

In his case, many prominent facts quite inconsistent with an innocent purpose mark every stage of the venture. The government cannot explain them away, because the evidence of their real character is not within its reach, it having been in many instances withheld, destroyed, or removed by the claimant, and the whole transaction having been so much out of the usual channels of commercial operations as to elude fair inquiry. The claimant, although he, and he only, holds the clues to these mysteries, will not disclose them, but chooses rather to rest under the shadow of the suspicions and presumptions they arouse than to subject them to the light of full and free investigation.

We therefore insist, that even if these facts, inconsistent with an innocent purpose, were in this case far less numerous or impressive than they are, this misconduct of the claimant would entitle them to the weight of satisfactory proof.

VI.

The evidence in this case, being, *of itself*, on the principles already stated, conclusive of the question of guilty purpose in the

projected enterprise, so that forfeiture must ensue, it is not necessary to rest the case on the rule that a presumption of guilt will be established by the existence of merely suspicious circumstances, which the claimant may, but will not explain. In his opinion in the case of the bark Kate, the learned judge of the district court thus states the rule: "In actions of this class (for penalties or forfeitures for infractions of penal laws) the government is not restricted to proof of positive facts in laying a foundation for a presumption or inference that acts have been done in violation of law, but they may invoke circumstances calculated to raise suspicions that the purpose inducing the acts performed was illicit, which suspicions must avail as convicting evidence, unless countervailed or explained by proofs in the power of the claimant to furnish." The opinion from which this rule is extracted is an able and elaborate vindication of the propriety of its application to slaver cases where the guilty parties had learned to conceal their traffic under the garb of innocent trade, and, by submerging all positive proof of their real purpose, had almost defeated the operation of the preventive acts of 1794 and 1818. The large experience of Judge Betts in this class of cases gives to his opinion on the rule of proof quite as much weight of authority as can be claimed for that of any other court, and it is believed that this court, on review of the slave cases at this term, will give to it their approval, if, in any of them, they should think its application necessary.

In conclusion, we submit that the action of the district and circuit court should be affirmed.

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Special Counsel for United States.

OPINION OF JUSTICE NELSON.—THE UNITED STATES *VS.* THE BARK WEATHERGUAGE AND HER CARGO.

NELSON, J.—The libel in this case was filed to declare the condemnation and forfeiture of the Weatherguage and cargo, for having been fitted to be employed in the slave trade, in violation of the acts of Congress of March 22d, 1794, and April 20th, 1818.

The case may be said to be a close one on the facts, and we have retained it some length of time for consideration, being in doubt whether the proofs fairly maintained the conclusion, which the mind could not avoid coming at, upon the suspicious nature of some of the facts in the record.

As it respects the arrangements of the interior of the vessel and the character of the cargo, as stated by one of the most experienced and intelligent witnesses, they may as well indicate an intent to enter upon a legal as an illegal voyage; and if there was nothing else in the case, the decree should be for the claimant. But there are other facts in the record which cannot be overlooked, and which, in our judgment, and after considerable reflection, turn the case against him.

This claimant, John Morris, who bought the vessel and paid $12,000 for her, and sets up that he is owner of the vessel and carrier of the cargo, is a myth. Nobody, for aught that appears in the case, knows him, or even his full name. Woodbury, who, it is said, sold the vessel to him, is not produced. His partner, Schmidt, proves his handwriting to the bill of sale, and the payment of the money. Morris disappears, and is not again heard from. Whether any such man ever had existed, is more than doubtful. According to the manifest, Edward Mitchel was master of the vessel. He is not produced, nor have we any account of him. He must have been Morris's master, if he had an existence, and could have given us some information of that individual, as well as of himself.

Antonio Tuero, who purports to have been shipper of the cargo, was produced on the part of the claimants, but does not know Morris or Mitchell, nor does he give us any account of

his own connexion with the ship, or with whom he contracted for the shipment of the cargo.

In our judgment, the proof was such on the part of the government as to throw the *onus* upon the claimant to clear up the mysteries and suspicions ~~strictly~~ surrounding the transaction, and which, if honest, could have been readily cleared up. All the facts unexplained leave a settled conviction that the charge in the libel against the vessel and cargo is true.

Decree below affirmed.